

AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1481**

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**Introduced by Senator Poochigian**

February 23, 2006

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An act to amend Sections 1101, 1103, 1201, 2103, 2104, 2202, 2310, 2323, 2401, 2503, 2505, 2506, 2509, 2605, 2705, 3103, 4104, 4210, 5103, 8102, 8103, 9102, 9203, 9207, 9208, 9301, 9310, 9312, 9313, 9314, 9317, 9338, 9601, 10103, 10501, 10514, 10518, 10519, 10526, 10527, 10528, 11105, 11106, and 11204 of, to amend and renumber Sections 1107, 1205, 1207, 1208, and 1209 of, to amend, renumber, and add Sections 1106, 1108, 1202, 1203, and 1204 of, to add Chapter 3 (commencing with Section 1301) to Division 1 of, to repeal Sections 1105, 1210, 2208, 10207, and 13104 of, to repeal and add Sections 1102 and 1206 of, and to repeal and add Division 7 (commencing with Section 7101) of, the Commercial Code, relating to commercial transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1481, as amended, Poochigian. Commercial transactions.

(1) Existing provisions of the Commercial Code generally govern commercial transactions.

This bill would revise those provisions generally in accordance with the revisions of Uniform Commercial Code Article 1 proposed by the National Conference of Commissioners on Uniform State Law.

Specifically, the bill would revise choice of law provisions for commercial transactions, including establishing specific choice of law provisions for consumers, as defined. The bill would revise various definitions, including the definitions for "bill of lading," "document of title," and "security interest." The bill would revise the definition

of “good faith” to also mean the observance of reasonable commercial standards of fair dealing. The bill would expand the definition of “purchase” to include taking by lease. The bill would revise the definition of “bank” to include savings banks, savings and loan associations, credit unions, and trust companies. The bill would make various other definitional changes relating to commercial transactions.

The bill would also modify, limit, and supersede specified portions of the federal Electronic Signatures in Global and National Commerce Act as it relates to the Commercial Code. The bill would revise provisions relating to the judicial recognition of specified documents relating to commercial transactions, and to the judicial presumptions relating to those documents. The bill would revise provisions governing waiver or renunciation of a claim or right after breach by requiring agreement of the aggrieved party. The bill would make conforming changes.

(2) Existing law sets forth principals governing documents of title, including bills of lading and warehouse receipts, and governs the rights, duties, and liabilities of a warehouseman or carrier as well as of the holder of the document and other parties to a transaction involving the document of title.

This bill would revise those provisions generally in accordance with the revision of Uniform Commercial Code Article 7 proposed by the National Conference of Commissioners on Uniform State Laws.

Specifically, the bill would revise those provisions to apply to electronic documents of title. The bill would also revise terms used in those provisions, substituting “warehouse” for “warehouseman” and adding definitions for certain terms relating to documents of title. The bill would clarify the circumstances making a document of title nonnegotiable and the requisite terms for a valid warehouse receipt. The bill would delete references to tariffs or filed classifications and make other changes and would expand the liability limitation a warehouse may impose in a warehouse receipt. The bill would also revise the warehouse and carrier lien provisions.

This bill would also revise the provisions governing documents of title to conform with those in the Uniform Commercial Code. The conforming changes would be made by the bill to certain definitional provisions and negotiability characteristics of documents of title. The bill would also make conforming changes by deleting a provision that limits a warehouse’s liability to the actual value of the goods in

*designated circumstances and by deleting a provision in a warehouse receipt relating to the storage and handling rate for goods in a public utility warehouse. The bill would make other conforming changes by describing the obligations of a bailee under a delivery order and the defeasance of title through an unaccepted delivery order. The bill would also make conforming changes to warehouse lien provisions.*

~~Existing law generally governs commercial transactions, including documents of title and the rights, duties, and liabilities of the parties to a transaction involving documents of title.~~

~~This bill would declare the Legislature's intent to amend Articles 1 and 7 of the Commercial Code to make revisions proposed by the National Conference of Commissioners on Uniform State Laws.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1101 of the Commercial Code is  
2     amended to read:  
3     1101. This code ~~shall be known and~~ may be cited as the  
4     Uniform Commercial Code.  
5     SEC. 2. Section 1102 of the Commercial Code is repealed.  
6     ~~1102. (1) This code shall be liberally construed and applied~~  
7     ~~to promote its underlying purposes and policies.~~  
8     ~~(2) Underlying purposes and policies of this code are~~  
9     ~~(a) To simplify, clarify and modernize the law governing~~  
10    ~~commercial transactions;~~  
11    ~~(b) To permit the continued expansion of commercial practices~~  
12    ~~through custom, usage and agreement of the parties;~~  
13    ~~(c) To make uniform the law among the various jurisdictions.~~  
14    ~~(3) The effect of provisions of this code may be varied by~~  
15    ~~agreement, except as otherwise provided in this code and except~~  
16    ~~that the obligations of good faith, diligence, reasonableness and~~  
17    ~~care prescribed by this code may not be disclaimed by agreement~~  
18    ~~but the parties may by agreement determine the standards by~~  
19    ~~which the performance of such obligations is to be measured if~~  
20    ~~such standards are not manifestly unreasonable.~~  
21    ~~(4) The presence in certain provisions of this code of the~~  
22    ~~words "unless otherwise agreed" or words of similar import does~~

1 not imply that the effect of other provisions may not be varied by  
2 agreement under subdivision (3):

3 (5) ~~In this code unless the context otherwise requires~~

4 (a) ~~Words in the singular number include the plural, and in the~~  
5 ~~plural include the singular;~~

6 (b) ~~Words of the masculine or feminine gender include the~~  
7 ~~masculine, the feminine, and the neuter, and when the sense so~~  
8 ~~indicates words of the neuter gender may refer to any gender.~~

9 *SEC. 3. Section 1102 is added to the Commercial Code, to*  
10 *read:*

11 *1102. This division applies to a transaction to the extent that*  
12 *it is governed by another division of this code.*

13 *SEC. 4. Section 1103 of the Commercial Code is amended to*  
14 *read:*

15 *1103. (a) This code shall be liberally construed and applied*  
16 *to promote its underlying purposes and policies, which are:*

17 *(1) to simplify, clarify, and modernize the law governing*  
18 *commercial transactions;*

19 *(2) to permit the continued expansion of commercial practices*  
20 *through custom, usage, and agreement of the parties; and*

21 *(3) to make uniform the law among the various jurisdictions.*

22 *(b) Unless displaced by the particular provisions of this code,*  
23 *the principles of law and equity, including the law merchant and*  
24 *the law relative to capacity to contract, principal and agent,*  
25 *estoppel, fraud, misrepresentation, duress, coercion, mistake,*  
26 *bankruptcy, or and other validating or invalidating cause shall*  
27 *supplement its provisions.*

28 *SEC. 5. Section 1105 of the Commercial Code is repealed.*

29 ~~1105. (1) Except as provided hereafter in this section, when~~  
30 ~~a transaction bears a reasonable relation to this state and also to~~  
31 ~~another state or nation the parties may agree that the law either of~~  
32 ~~this state or of such other state or nation shall govern their rights~~  
33 ~~and duties. Failing such agreement this code applies to~~  
34 ~~transactions bearing an appropriate relation to this state.~~

35 ~~(2) Where one of the following provisions of this code~~  
36 ~~specifies the applicable law, that provision governs and a~~  
37 ~~contrary agreement is effective only to the extent permitted by~~  
38 ~~the law (including the conflict of laws rules) so specified:~~

39 ~~Rights of creditors against sold goods. Section 2402.~~

~~Applicability of the division on leases. Sections 10105 and 10106.~~

~~Applicability of the division on bank deposits and collections. Section 4102.~~

~~Letters of credit. Section 5116.~~

~~Bulk sales subject to the division on bulk sales. Section 6103.~~

~~Applicability of the division on investment securities. Section 8110.~~

~~Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9301 to 9307, inclusive.~~

*SEC. 6. Section 1106 of the Commercial Code is amended and renumbered to read:*

~~1106.~~

*1305. (1)-(a) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party has had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this code or by other rule of law.*

~~(2)~~

*(b) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.*

*SEC. 7. Section 1106 is added to the Commercial Code, to read:*

*1106. In this code, unless the statutory context otherwise requires:*

*(1) words in the singular number include the plural, and those in the plural include the singular; and*

*(2) words of any gender also refer to any other gender.*

*SEC. 8. Section 1107 of the Commercial Code is amended and renumbered to read:*

~~1107.~~

*1306. Any A claim or right arising out of an alleged breach can may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by agreement of the aggrieved party in an authenticated record.*

*SEC. 9. Section 1108 of the Commercial Code is amended and renumbered to read:*

1     ~~1108.~~

2     1105. If any provision or clause of this code or *its* application  
3     ~~thereof~~ to any person or ~~circumstances~~ *circumstance* is held  
4     invalid, ~~such the~~ invalidity ~~shall~~ *does* not affect other provisions  
5     or applications of the code which can be given effect without the  
6     invalid provision or application, and to this end the provisions of  
7     this code are ~~declared to be~~ severable.

8     SEC. 10. Section 1108 is added to the Commercial Code, to  
9     read:

10    1108. This chapter modifies, limits, and supersedes the  
11    federal Electronic Signatures in Global and National Commerce  
12    Act, 15 U.S.C. Section 7001 *et seq.*, except that nothing in this  
13    chapter modifies, limits, or supercedes Section 7001(c) of that  
14    act or authorizes electronic delivery of any of the notices  
15    described in Section 7003(b) of that act.

16    SEC. 11. Section 1201 of the Commercial Code is amended to  
17    read:

18    1201. ~~The following definitions apply for purposes of this~~  
19    ~~code, subject to additional definitions contained in the~~  
20    ~~subsequent divisions of this code that apply to specific divisions~~  
21    ~~or chapters thereof, and unless the context otherwise~~  
22    ~~requires:~~ (a) *Unless the context otherwise requires, words or*  
23    ~~phrases defined in this section, or in the additional definitions~~  
24    ~~contained in other divisions of this code that apply to particular~~  
25    ~~divisions or chapters thereof, have the meanings stated.~~

26    (b) *Subject to definitions contained in other divisions of this*  
27    ~~code that apply to particular divisions or chapters thereof:~~

28    (1) “Action,” in the sense of a judicial proceeding, includes  
29    recoupment, counterclaim, setoff, suit in equity, and any other  
30    ~~proceedings~~ *proceeding* in which rights are determined.

31    (2) “Aggrieved party” means a party entitled to ~~resort to~~  
32    *pursue* a remedy.

33    (3) “Agreement,” *as distinguished from “contract,”* means the  
34    bargain of the parties in fact, as found in their language or ~~by~~  
35    ~~implication~~ *inferred* from other circumstances, including *course*  
36    ~~of performance~~, course of dealing, or usage of trade, ~~and course~~  
37    ~~of performance as provided in this code (Sections 1205, 2208,~~  
38    ~~and 10207). Whether an agreement has legal consequences is~~  
39    ~~determined by the provisions of this code, if applicable, and~~

1 otherwise by the law of contracts (Section 1103). (Compare  
2 “contract.”) as provided in Section 1303.

3 (4) “Bank” means ~~any~~ a person engaged in the business of  
4 banking, and includes a savings bank, savings and loan  
5 association, credit union, and trust company.

6 (5) “Bearer” means ~~the~~ a person in possession of ~~an~~ a  
7 negotiable instrument, document of title, or certificated security  
8 that is payable to bearer or endorsed in blank.

9 (6) “Bill of lading” means a document evidencing the receipt  
10 of goods for shipment issued by a person engaged in the business  
11 of transporting or forwarding goods, and that, by its terms,  
12 evidences the intention of the issuer that the person entitled under  
13 the document (Section 7403(4)) has the right to receive, hold,  
14 and dispose of the document and the goods it covers. Designation  
15 of a document by the issuer as a “bill of lading” is conclusive  
16 evidence of that intention. “Bill of lading” includes an airbill.  
17 “Airbill” means a document serving for air transportation as a  
18 bill of lading does for marine or rail transportation, and includes  
19 an air consignment note or air waybill.

20 (7) “Branch” includes a separately incorporated foreign branch  
21 of a bank.

22 (8) “Burden of establishing” a fact means the burden of  
23 persuading the triers *trier* of fact that the existence of the fact is  
24 more probable than its nonexistence.

25 (9) “Buyer in ordinary course of business” means a person that  
26 buys goods in good faith, without knowledge that the sale  
27 violates the rights of another person in the goods, and in the  
28 ordinary course from a person, other than a pawnbroker, in the  
29 business of selling goods of that kind. A person buys goods in the  
30 ordinary course if the sale to the person comports with the usual  
31 or customary practices in the kind of business in which the seller  
32 is engaged or with the seller’s own usual or customary practices.  
33 A person that sells oil, gas, or other minerals at the wellhead or  
34 minehead is a person in the business of selling goods of that kind.  
35 A buyer in the ordinary course of business may buy for cash, by  
36 exchange of other property, or on secured or unsecured credit,  
37 and may acquire goods or documents of title under a preexisting  
38 contract for sale. Only a buyer that takes possession of the goods  
39 or has a right to recover the goods from the seller under Division  
40 2 (commencing with Section 2101) may be a buyer in ordinary

1 course of business. ~~A “Buyer in ordinary course of business”~~  
2 ~~does not include a person that acquires goods in a transfer in bulk~~  
3 ~~or as security for or in total or partial satisfaction of a money debt~~  
4 ~~is not a buyer in ordinary course of business.~~

5 (10) ~~“Conspicuous.” A term or clause is conspicuous when it~~  
6 ~~is “Conspicuous,” with reference to a term, means so written,~~  
7 ~~displayed, or presented that a reasonable person against whom it~~  
8 ~~is to operate ought to have noticed it. A printed heading in~~  
9 ~~capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous.~~  
10 Language in the body of a form is “conspicuous” if it is in larger  
11 or other contrasting type or color, except that in a telegram any  
12 stated term is “conspicuous.” Whether a term or clause is  
13 “conspicuous” or not is ~~for a decision by~~ for the court.  
14 *Conspicuous terms include the following:*

15 (A) *a heading in capitals equal to or greater in size than the*  
16 *surrounding text, or in contrasting type, font, or color to the*  
17 *surrounding text of the same or lesser size; and*

18 (B) *language in the body of a record or display in larger type*  
19 *than the surrounding text, or in contrasting type, font, or color to*  
20 *the surrounding text of the same size, or set off from surrounding*  
21 *text of the same size by symbols or other marks that call attention*  
22 *to the language.*

23 (11) ~~“Contract”~~ “Consumer” means an individual who enters  
24 into a transaction primarily for personal, family, or household  
25 purposes.

26 (12) “Contract,” as distinguished from “agreement,” means  
27 the total legal obligation that results from the parties’ agreement  
28 as ~~affected determined~~ by this code and *as supplemented by any*  
29 ~~other applicable rules of law. (Compare “agreement.”) laws.~~

30 ~~(12)~~

31 (13) “Creditor” includes a general creditor, a secured creditor,  
32 a lien creditor, and any representative of creditors, including an  
33 assignee for the benefit of creditors, a trustee in bankruptcy, a  
34 receiver in equity, and an executor or administrator of an  
35 insolvent debtor’s or assignor’s estate.

36 ~~(13)~~

37 (14) “Defendant” includes a person in the position of  
38 defendant in a ~~cross-action or counterclaim~~ counterclaim,  
39 cross-claim, or third-party claim.

40 ~~(14)~~



1 (15) “Delivery,” with respect to ~~instruments, documents an~~  
2 ~~instrument, document~~ of title, or chattel paper, ~~or certificated~~  
3 ~~securities~~; means the voluntary transfer of possession.

4 ~~(15)~~

5 (16) “Document of title” includes a bill of lading, dock  
6 warrant, dock receipt, warehouse receipt, ~~gin ticket, or compress~~  
7 ~~receipt~~, or order for the delivery of goods, and also any other  
8 document ~~that, which~~ in the regular course of business or  
9 financing; is treated as adequately evidencing that the person *in*  
10 *possession of it* is entitled under the document (Section 7403(4))  
11 has the right to receive, hold, and dispose of the document and  
12 the goods it covers. To be a document of title, a document ~~shall~~  
13 *must* purport to be issued by or *addressed to* a bailee and purport  
14 to cover goods in the bailee’s possession ~~that which are~~ either ~~are~~  
15 identified ~~as~~ or are fungible portions of an identified mass.

16 ~~(16)~~

17 (17) “Fault” means *a default, breach, or wrongful act, or*  
18 ~~omission, or breach.~~

19 ~~(17)~~

20 (18) ~~“Fungible,” with respect to goods or securities, “Fungible~~  
21 ~~goods” means goods or securities:~~

22 (A) *Goods* of which any unit is, by nature or usage of trade, *is*  
23 the equivalent of any other like unit. ~~Goods that are not fungible~~  
24 ~~shall be deemed fungible for the purposes of this code to the~~  
25 ~~extent that, under a particular agreement or document, unlike~~  
26 ~~units are treated as equivalents.; or~~

27 (B) *Goods that by agreement are treated as equivalent.*

28 ~~(18)~~

29 (19) “Genuine” means free of forgery or counterfeiting.

30 ~~(19)~~

31 (20) ~~“Good faith”~~ “*Good faith,*” *except as otherwise provided*  
32 *in Division 5 (commencing with Section 5101), means honesty in*  
33 ~~fact in the conduct or transaction concerned and the observance~~  
34 ~~of reasonable commercial standards of fair dealing.~~

35 ~~(20)~~

36 (21) “Holder,” ~~with respect to~~ *means:*

37 (A) *the person in possession of a negotiable instrument, means*  
38 ~~the person in possession if the instrument that is payable either to~~  
39 ~~bearer or, in the case of an instrument payable to an identified~~

1 person, if the identified person is in possession. “Holder,” with  
2 respect to *that is the person in possession; or*

3 (B) *the person in possession of a document of title, means the*  
4 *person in possession if the goods are deliverable either to bearer*  
5 *or to the order of the person in possession.*

6 (21) ~~To “honor” is to pay or to accept and pay or, where a~~  
7 ~~credit so engages, to purchase or discount a draft complying with~~  
8 ~~the terms of the credit.~~

9 (22) ~~“Insolvency proceedings” proceeding” includes any an~~  
10 ~~assignment for the benefit of creditors or other proceedings~~  
11 ~~proceeding intended to liquidate or rehabilitate the estate of the~~  
12 ~~person involved.~~

13 (23) ~~A person is “insolvent” who either has “Insolvent”~~  
14 ~~means:~~

15 (A) *having generally ceased to pay his or her debts in the*  
16 *ordinary course of business, cannot pay his or her other than as*  
17 *a result of bona fide dispute;*

18 (B) *being unable to pay debts as they become due;; or is*

19 (C) *being insolvent within the meaning of the federal*  
20 *bankruptcy law.*

21 (24) “Money” means a medium of exchange *currently*  
22 *authorized or adopted by a domestic or foreign government and.*  
23 *The term includes a monetary unit of account established by an*  
24 *intergovernmental organization or by agreement between two or*  
25 *more nations countries.*

26 (25) ~~A person has “notice” of a fact when any of the following~~  
27 ~~occurs:~~

28 (a) ~~He or she has actual knowledge of it.~~

29 (b) ~~He or she has received a notice or notification of it.~~

30 (c) ~~From all the facts and circumstances known to him or her~~  
31 ~~at the time in question, he or she has reason to know that it exists.~~  
32 ~~A person “knows” or has “knowledge” of a fact when he or she~~  
33 ~~has actual knowledge of it. “Discover” or “learn,” or a word or~~  
34 ~~phrase of similar import, refers to knowledge rather than to~~  
35 ~~reason to know. The time and circumstances under which a~~  
36 ~~notice or notification may cease to be effective are not~~  
37 ~~determined by this code.~~

38 (26) ~~A person “notifies” or “gives” a notice or notification to~~  
39 ~~another by taking those steps that may be reasonably required to~~  
40 ~~inform the other in ordinary course whether or not the other~~

1 actually comes to know of it. A person “receives” a notice or  
2 notification when any of the following occurs:

3 (a) It comes to his or her attention.

4 (b) It is duly delivered at the place of business through which  
5 the contract was made or at any other place held out by him or  
6 her as the place for receipt of these communications.

7 (27) Notice, knowledge, or a notice or notification received by  
8 an organization is effective for a particular transaction from the  
9 time it is brought to the attention of the individual conducting  
10 that transaction and, in any event, from the time it would have  
11 been brought to his or her attention if the organization had  
12 exercised due diligence. An organization exercises due diligence  
13 if it maintains reasonable routines for communicating significant  
14 information to the person conducting the transaction and there is  
15 reasonable compliance with the routines. Due diligence does not  
16 require an individual acting for the organization to communicate  
17 information unless the communication is part of his or her  
18 regular duties, or unless he or she has reason to know of the  
19 transaction and that the transaction would be materially affected  
20 by the information.

21 (28) “Organization” includes a means a person other than an  
22 individual.

23 (26) “Party,” as distinguished from “third party,” means a  
24 person that has engaged in a transaction or made an agreement  
25 subject to this code.

26 (27) “Person” means an individual, corporation, government  
27 or governmental subdivision or agency, business trust, estate,  
28 trust, partnership or association, two or more persons having a  
29 joint or common interest, limited liability company, association,  
30 joint venture, government, governmental subdivision, agency, or  
31 instrumentality, public corporation, or any other legal or  
32 commercial entity.

33 (28) “Present value” means the amount as of a date certain of  
34 one or more sums payable in the future, discounted to the date  
35 certain by use of either an interest rate specified by the parties if  
36 that rate is not manifestly unreasonable at the time the  
37 transaction is entered into or, if an interest rate is not so  
38 specified, a commercially reasonable rate that takes into account  
39 the facts and circumstances at the time the transaction is entered  
40 into.

1 (29) ~~“Party,” as distinct from “third party,” means a person~~  
2 ~~who has engaged in a transaction or made an agreement within~~  
3 ~~this division.~~

4 (30) ~~“Person” includes an individual or an organization. (See~~  
5 ~~Section 1102.)~~

6 (31) ~~“Purchase”~~ *includes means* taking by sale, lease,  
7 discount, negotiation, mortgage, pledge, lien, security interest,  
8 issue or reissue, gift, or any other voluntary transaction creating  
9 an interest in property.

10 (32)  
11 (30) “Purchaser” means a person ~~who~~ *that* takes by purchase.  
12 (31) *“Record” means information that is inscribed on a*  
13 *tangible medium or that is stored in an electronic or other*  
14 *medium and is retrievable in perceivable form.*

15 (33)  
16 (32) “Remedy” means any remedial right to which an  
17 aggrieved party is entitled with or without resort to a tribunal.

18 (34)  
19 (33) “Representative” ~~includes means~~ *a person empowered to*  
20 *act for another, including an agent, an officer of a corporation or*  
21 *association, and a trustee, executor, or administrator of an estate;*  
22 ~~or any other person empowered to act for another.~~

23 (35) ~~“Rights” includes remedies~~

24 (34) *“Right” includes remedy.*

25 (36) ~~(a)~~  
26 (35) “Security interest” means an interest in personal property  
27 or fixtures ~~that~~ *which* secures payment or performance of an  
28 obligation. ~~The term also~~ “Security interest” includes any  
29 interest of a ~~co-signor~~ *consignor* and a buyer of accounts, chattel  
30 paper, a payment intangible, or a promissory note in a transaction  
31 that is subject to Division 9 (commencing with Section 9101).  
32 ~~The~~ “Security interest” *does not include the* special property  
33 interest of a buyer of goods on identification of those goods to a  
34 contract for sale under Section 2401 ~~is not a “security interest,”~~  
35 but a buyer may also acquire a “security interest” by complying  
36 with Division 9 (commencing with Section 9101). Except as  
37 otherwise provided in Section 2505, the right of a seller or lessor  
38 of goods under Division 2 (commencing with Section 2101) or  
39 Division 10 (commencing with Section 10101) to retain or  
40 acquire possession of the goods is not a “security interest,” but a

1 seller or lessor may also acquire a “security interest” by  
2 complying with Division 9 (commencing with Section 9101).  
3 The retention or reservation of title by a seller of goods  
4 notwithstanding shipment or delivery to the buyer ~~(Section 2401)~~  
5 *under Section 2401* is limited in effect to a reservation of a  
6 “security interest.”

7 ~~(b) Whether a transaction creates a lease or security interest is~~  
8 ~~determined by the facts of each case. However, a transaction~~  
9 ~~creates a security interest if the consideration the lessee is to pay~~  
10 ~~the lessor for the right to possession and use of the goods is an~~  
11 ~~obligation for the term of the lease not subject to termination by~~  
12 ~~the lessee, and any of the following conditions applies:~~

13 ~~(i) The original term of the lease is equal to or greater than the~~  
14 ~~remaining economic life of the goods.~~

15 ~~(ii) The lessee is bound to renew the lease for the remaining~~  
16 ~~economic life of the goods or is bound to become the owner of~~  
17 ~~the goods.~~

18 ~~(iii) The lessee has an option to renew the lease for the~~  
19 ~~remaining economic life of the goods for no additional~~  
20 ~~consideration or nominal additional consideration upon~~  
21 ~~compliance with the lease agreement.~~

22 ~~(iv) The lessee has an option to become the owner of the~~  
23 ~~goods for no additional consideration or nominal additional~~  
24 ~~consideration upon compliance with the lease agreement.~~

25 ~~(e) A transaction does not create a security interest merely~~  
26 ~~because it provides one or more of the following:~~

27 ~~(i) That the present value of the consideration the lessee is~~  
28 ~~obligated to pay the lessor for the right to possession and use of~~  
29 ~~the goods is substantially equal to or greater than the fair market~~  
30 ~~value of the goods at the time the lease is entered into.~~

31 ~~(ii) That the lessee assumes the risk of loss of the goods, or~~  
32 ~~agrees to pay the taxes, insurance, filing, recording, or~~  
33 ~~registration fees, or service or maintenance costs with respect to~~  
34 ~~the goods.~~

35 ~~(iii) That the lessee has an option to renew the lease or to~~  
36 ~~become the owner of the goods.~~

37 ~~(iv) That the lessee has an option to renew the lease for a fixed~~  
38 ~~rent that is equal to or greater than the reasonably predictable fair~~  
39 ~~market rent for the use of the goods for the term of the renewal at~~  
40 ~~the time the option is to be performed.~~

1     ~~(v) That the lessee has an option to become the owner of the~~  
2 ~~goods for a fixed price that is equal to or greater than the~~  
3 ~~reasonably predictable fair market value of the goods at the time~~  
4 ~~the option is to be performed.~~

5     ~~(vi) In the case of a motor vehicle, as defined in Section 415 of~~  
6 ~~the Vehicle Code, or a trailer, as defined in Section 630 of that~~  
7 ~~code, that is not to be used primarily for personal, family, or~~  
8 ~~household purposes, that the amount of rental payments may be~~  
9 ~~increased or decreased by reference to the amount realized by the~~  
10 ~~lessor upon sale or disposition of the vehicle or trailer. Nothing~~  
11 ~~in this subparagraph affects the application or administration of~~  
12 ~~the Sales and Use Tax Law (Part 1 (commencing with Section~~  
13 ~~6001), Division 2, Revenue and Taxation Code).~~

14     ~~(d) For purposes of this subdivision (36), all of the following~~  
15 ~~apply:~~

16     ~~(i) Additional consideration is not nominal if (A) when the~~  
17 ~~option to renew the lease is granted to the lessee, the rent is~~  
18 ~~stated to be the fair market rent for the use of the goods for the~~  
19 ~~term of the renewal determined at the time the option is to be~~  
20 ~~performed, or (B) when the option to become the owner of the~~  
21 ~~goods is granted to the lessee, the price is stated to be the fair~~  
22 ~~market value of the goods determined at the time the option is to~~  
23 ~~be performed. Additional consideration is nominal if it is less~~  
24 ~~than the lessee's reasonably predictable cost of performing under~~  
25 ~~the lease agreement if the option is not exercised.~~

26     ~~(ii) "Reasonably predictable" and "remaining economic life of~~  
27 ~~the goods" are to be determined with reference to the facts and~~  
28 ~~circumstances at the time the transaction is entered into.~~

29     ~~(iii) "Present value" means the amount as of a date certain of~~  
30 ~~one or more sums payable in the future, discounted to the date~~  
31 ~~certain. The discount is determined by the interest rate specified~~  
32 ~~by the parties if the rate is not manifestly unreasonable at the~~  
33 ~~time the transaction is entered into; otherwise, the discount is~~  
34 ~~determined by a commercially reasonable rate that takes into~~  
35 ~~account the facts and circumstances of each case at the time the~~  
36 ~~transaction was entered into. Whether a transaction in the form of~~  
37 ~~a lease creates a "security interest" is determined pursuant to~~  
38 ~~Section 1203.~~

39     ~~(37)~~

(36) “Send,” in connection with ~~any a writing or~~ , *record*, or notice; means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there is none, to any address reasonable under the circumstances. ~~The receipt of any writing; or~~

(B) *in any other way to cause to be received any record or notice within the time in which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words “with return receipt requested” are also used.*

~~(38)~~

(37) “Signed” includes *using* any symbol executed or adopted by a party with present intention to ~~authenticate~~ *adopt or accept* a writing.

(38) “*State*” means *a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

(39) “Surety” includes *a guarantor or other secondary obligor.*

~~(40) “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.~~

~~(41) “Term” means that a portion of an agreement that relates to a particular matter.~~

~~(42)~~

~~(41) “Unauthorized” signature—“Unauthorized signature” means one a signature made without actual, implied, or apparent authority, and. The term includes a forgery.~~

~~(43) “Value.” Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives “value” for rights if he or she acquires them in any of the following ways:~~

~~(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not~~

1 ~~drawn upon and whether or not a chargeback is provided for in~~  
2 ~~the event of difficulties in collection.~~

3 ~~(b) As security for, or in total or partial satisfaction of, a~~  
4 ~~preexisting claim.~~

5 ~~(c) By accepting delivery pursuant to a preexisting contract for~~  
6 ~~purchase.~~

7 ~~(d) Generally, in return for any consideration sufficient to~~  
8 ~~support a simple contract.~~

9 ~~(44) “Warehouse receipt” means a document evidencing the~~  
10 ~~receipt of goods for storage issued by a warehouseman (Section~~  
11 ~~7102), and that, by its terms, evidences the intention of the issuer~~  
12 ~~that the person entitled under the document (Section 7403(4)) has~~  
13 ~~the right to receive, hold, and dispose of the document and the~~  
14 ~~goods it covers. Designation of a document by the issuer as a~~  
15 ~~“warehouse receipt” is conclusive evidence of that intention.~~

16 ~~(45) “Written” or “writing”~~

17 ~~(42) “Warehouse receipt” means a receipt issued by a person~~  
18 ~~engaged in the business of storing goods for hire.~~

19 ~~(43) “Writing” includes printing, typewriting, or any other~~  
20 ~~intentional reduction to tangible form. “Written” has a~~  
21 ~~corresponding meaning.~~

22 ~~SEC. 12. Section 1202 of the Commercial Code is amended~~  
23 ~~and renumbered to read:~~

24 ~~1202.~~

25 ~~1307. (1) A document in due form purporting to be a bill of~~  
26 ~~lading, policy or certificate of insurance, official weigher’s or~~  
27 ~~inspector’s certificate, consular invoice, or any other document~~  
28 ~~authorized or required by the contract to be issued by a third~~  
29 ~~party is admissible as prima facie evidence of its own~~  
30 ~~authenticity and genuineness and of the facts stated in the~~  
31 ~~document by the third party in any action arising out of the~~  
32 ~~contract which authorized or required the document.~~

33 ~~(2) In any action arising out of the contract which authorized~~  
34 ~~or required the document referred to in subdivision (1):~~

35 ~~(a) A document in due form purporting to be the document~~  
36 ~~referred to in subdivision (1) is presumed to be authentic and~~  
37 ~~genuine. This presumption is a presumption affecting the burden~~  
38 ~~of producing evidence.~~

39 ~~(b) If the document is found to be authentic and genuine, the~~  
40 ~~facts stated in the document by the third party are presumed to be~~



1 true. This presumption is a presumption affecting the burden of  
2 proof.

3 SEC. 13. Section 1202 is added to the Commercial Code, to  
4 read:

5 1202. (a) Subject to subdivision (f), a person has “notice” of  
6 a fact if the person:

7 (1) has actual knowledge of it;

8 (2) has received a notice or notification of it; or

9 (3) from all the facts and circumstances known to the person  
10 at the time in question, has reason to know that it exists.

11 (b) “Knowledge” means actual knowledge. “Knows” has a  
12 corresponding meaning.

13 (c) “Discover,” “learn,” or words of similar import refer to  
14 knowledge rather than to reason to know.

15 (d) A person “notifies” or “gives” a notice or notification to  
16 another person by taking such steps as may be reasonably  
17 required to inform the other person in ordinary course, whether  
18 or not the other person actually comes to know of it.

19 (e) Subject to subdivision (f), a person “receives” a notice or  
20 notification when:

21 (1) it comes to that person’s attention; or

22 (2) it is duly delivered in a form reasonable under the  
23 circumstances at the place of business through which the  
24 contract was made or at another location held out by that person  
25 as the place for receipt of such communications.

26 (f) Notice, knowledge, or a notice or notification received by  
27 an organization is effective for a particular transaction from the  
28 time it is brought to the attention of the individual conducting  
29 that transaction and, in any event, from the time it would have  
30 been brought to the individual’s attention if the organization had  
31 exercised due diligence. An organization exercises due diligence  
32 if it maintains reasonable routines for communicating significant  
33 information to the person conducting the transaction and there is  
34 reasonable compliance with the routines. Due diligence does not  
35 require an individual acting for the organization to communicate  
36 information unless the communication is part of the individual’s  
37 regular duties or the individual has reason to know of the  
38 transaction and that the transaction would be materially affected  
39 by the information.

1     *SEC. 14. Section 1203 of the Commercial Code is amended*  
2     *and renumbered to read:*

3     ~~1203.~~

4     1304. Every contract or duty within this code imposes an  
5     obligation of good faith in its performance ~~or~~ and enforcement.

6     *SEC. 15. Section 1203 is added to the Commercial Code, to*  
7     *read:*

8     1203. (a) *Whether a transaction in the form of a lease*  
9     *creates a lease or security interest is determined by the facts of*  
10    *each case.*

11    (b) *A transaction in the form of a lease creates a security*  
12    *interest if the consideration that the lessee is to pay the lessor for*  
13    *the right to possession and use of the goods is an obligation for*  
14    *the term of the lease and is not subject to termination by the*  
15    *lessee, and:*

16    (1) *the original term of the lease is equal to or greater than*  
17    *the remaining economic life of the goods;*

18    (2) *the lessee is bound to renew the lease for the remaining*  
19    *economic life of the goods or is bound to become the owner of*  
20    *the goods;*

21    (3) *the lessee has an option to renew the lease for the*  
22    *remaining economic life of the goods for no additional*  
23    *consideration or for nominal additional consideration upon*  
24    *compliance with the lease agreement; or*

25    (4) *the lessee has an option to become the owner of the goods*  
26    *for no additional consideration or for nominal additional*  
27    *consideration upon compliance with the lease agreement.*

28    (c) *A transaction in the form of a lease does not create a*  
29    *security interest merely because:*

30    (1) *the present value of the consideration the lessee is*  
31    *obligated to pay the lessor for the right to possession and use of*  
32    *the goods is substantially equal to or is greater than the fair*  
33    *market value of the goods at the time the lease is entered into;*

34    (2) *the lessee assumes risk of loss of the goods;*

35    (3) *the lessee agrees to pay, with respect to the goods, taxes,*  
36    *insurance, filing, recording, or registration fees, or service or*  
37    *maintenance costs;*

38    (4) *the lessee has an option to renew the lease or to become*  
39    *the owner of the goods;*

1     (5) *the lessee has an option to renew the lease for a fixed rent*  
2 *that is equal to or greater than the reasonably predictable fair*  
3 *market rent for the use of the goods for the term of the renewal at*  
4 *the time the option is to be performed; or*

5     (6) *the lessee has an option to become the owner of the goods*  
6 *for a fixed price that is equal to or greater than the reasonably*  
7 *predictable fair market value of the goods at the time the option*  
8 *is to be performed.*

9     (d) *Additional consideration is nominal if it is less than the*  
10 *lessee's reasonably predictable cost of performing under the*  
11 *lease agreement if the option is not exercised. Additional*  
12 *consideration is not nominal if:*

13     (1) *when the option to renew the lease is granted to the lessee,*  
14 *the rent is stated to be the fair market rent for the use of the*  
15 *goods for the term of the renewal determined at the time the*  
16 *option is to be performed; or*

17     (2) *when the option to become the owner of the goods is*  
18 *granted to the lessee, the price is stated to be the fair market*  
19 *value of the goods determined at the time the option is to be*  
20 *performed.*

21     (e) *The "remaining economic life of the goods" and*  
22 *"reasonably predictable" fair market rent, fair market value, or*  
23 *cost of performing under the lease agreement must be determined*  
24 *with reference to the facts and circumstances at the time the*  
25 *transaction is entered into.*

26     SEC. 16. *Section 1204 of the Commercial Code is amended*  
27 *and renumbered to read:*

28     ~~1204.~~

29     ~~1205. (1) Whenever this code requires any action to be taken~~  
30 ~~within a reasonable time, any time which is not manifestly~~  
31 ~~unreasonable may be fixed by agreement.~~

32     ~~(2) What is a reasonable~~

33     (a) ~~Whether a time for taking any~~ *an action required by this*  
34 *code is reasonable* depends on the nature, purpose, and  
35 circumstances of ~~such~~ *the* action.

36     ~~(3)~~

37     (b) An action is taken "seasonably" ~~when~~ *if* it is taken at or  
38 within the time agreed or, if no time is agreed, at or within a  
39 reasonable time.

1     SEC. 17. Section 1204 is added to the Commercial Code, to  
2     read:

3     1204. Except as otherwise provided in Divisions 3, 4, 5, and  
4     6, a person gives value for rights if the person acquires them:

5     (1) in return for a binding commitment to extend credit or for  
6     the extension of immediately available credit, whether or not  
7     drawn upon and whether or not a charge back is provided for in  
8     the event of difficulties in collection;

9     (2) as security for, or in total or partial satisfaction of, a  
10    preexisting claim;

11    (3) by accepting delivery under a preexisting contract for  
12    purchase; or

13    (4) in return for any consideration sufficient to support a  
14    simple contract.

15    SEC. 18. Section 1205 of the Commercial Code is amended  
16    and renumbered to read:

17    ~~1205. (1)~~

18    1303. (a) A “course of performance” is a sequence of  
19    conduct between the parties to particular transaction that exists  
20    if:

21    (1) the agreement of the parties with respect to the transaction  
22    involves repeated occasions for performance by a party; and

23    (2) the other party, with knowledge of the nature of the  
24    performance and opportunity for objection to it, accepts the  
25    performance or acquiesces in it without objection.

26    ~~(b) A course of dealing~~ “course of dealing” is a sequence of  
27    conduct concerning previous ~~conduct~~ transactions between the  
28    parties to a particular transaction ~~which~~ that is fairly to be  
29    regarded as establishing a common basis of understanding for  
30    interpreting their expressions and other conduct.

31    ~~(2)~~

32    ~~(c) A usage of trade~~ “usage of trade” is any practice or  
33    method of dealing having such regularity of observance in a  
34    place, vocation, or trade as to justify an expectation that it will be  
35    observed with respect to the transaction in question. The  
36    existence and scope of such a usage ~~are to~~ must be proved as  
37    facts. If it is established that such a usage is embodied in a  
38    ~~written~~ trade code or similar ~~writing~~ record, the interpretation of  
39    the ~~writing is for the court~~ record is a question of law.

40    ~~(3)~~

1 (d) A course of performance or course of dealing between the  
2 parties ~~and any~~ or usage of trade in the vocation or trade in which  
3 they are engaged or of which they are or should be aware is  
4 relevant in ascertaining the meaning of the parties' agreement,  
5 may give particular meaning to ~~and supplement or qualify terms~~  
6 ~~of an agreement~~ specific terms of the agreement, and may  
7 supplement or qualify the terms of the agreement. A usage of  
8 trade applicable in the place in which part of the performance  
9 under the agreement is to occur may be so utilized as to that part  
10 of the performance.

11 ~~(4) The~~  
12 (e) Except as otherwise provided in subdivision (f), the express  
13 terms of an agreement and ~~an~~ any applicable course of  
14 performance, course of dealing, or usage of trade ~~shall~~ must be  
15 construed ~~wherever~~ whenever reasonable as consistent with each  
16 other; ~~but when. If such a construction is unreasonable express~~  
17 ~~terms control both course of dealing and usage of trade and~~  
18 ~~course of dealing controls usage of trade.~~

19 ~~(5) An applicable usage of trade in the place where any part of~~  
20 ~~performance is to occur shall be used in interpreting the~~  
21 ~~agreement as to that part of the performance.~~

22 ~~(6):~~  
23 (1) express terms prevail over course of performance, course  
24 of dealing, and usage of trade;

25 (2) course of performance prevails over course of dealing and  
26 usage of trade;

27 (3) course of dealing prevails over usage of trade.

28 (f) Subject to Section 2209, a course of performance is  
29 relevant to show a waiver or modification of any term  
30 inconsistent with the course of performance.

31 (g) Evidence of a relevant usage of trade offered by one party  
32 is not admissible unless ~~and until~~ ~~he~~ that party has given the  
33 other party ~~such notice as~~ that the court finds ~~sufficient~~ sufficient  
34 to prevent unfair surprise to the ~~latter~~ other party.

35 SEC. 19. Section 1206 of the Commercial Code is repealed.

36 ~~1206. (1) Except in the cases described in subdivision (2) of~~  
37 ~~this section a contract for the sale of personal property is not~~  
38 ~~enforceable by way of action or defense beyond five thousand~~  
39 ~~dollars (\$5,000) in amount or value of remedy unless there is~~  
40 ~~some writing which indicates that a contract for sale has been~~

1 made between the parties at a defined or stated price, reasonably  
2 identifies the subject matter, and is signed by the party against  
3 whom enforcement is sought or by his or her authorized agent.

4 (2) Subdivision (1) of this section does not apply to contracts  
5 for the sale of goods (Section 2201) nor of securities (Section  
6 8113) nor to security agreements (Sections 9201 and 9203).

7 (3) Subdivision (1) of this section does not apply to a qualified  
8 financial contract as that term is defined in paragraph (2) of  
9 subdivision (b) of Section 1624 of the Civil Code if either (a)  
10 there is, as provided in paragraph (3) of subdivision (b) of  
11 Section 1624 of the Civil Code, sufficient evidence to indicate  
12 that a contract has been made or (b) the parties thereto, by means  
13 of a prior or subsequent written contract, have agreed to be  
14 bound by the terms of the qualified financial contract from the  
15 time they reach agreement (by telephone, by exchange of  
16 electronic messages, or otherwise) on those terms.

17 SEC. 20. Section 1206 is added to the Commercial Code, to  
18 read:

19 1206. Whenever this code creates a “presumption” with  
20 respect to a fact, or provides that a fact is “presumed,” the trier  
21 of fact must find the existence of the fact unless and until  
22 evidence is introduced that supports a finding of its nonexistence.

23 SEC. 21. Section 1207 of the Commercial Code is amended  
24 and renumbered to read:

25 ~~1207.~~

26 1308. (a) A party ~~who, that~~ with explicit reservation of  
27 rights; performs or promises performance or assents to  
28 performance in a manner demanded or offered by the other party  
29 does not thereby prejudice the rights reserved. Such words as  
30 “without prejudice,” “under protest” or the like are sufficient.

31 (b) Subdivision (a) does not apply to an accord and  
32 satisfaction.

33 SEC. 22. Section 1208 of the Commercial Code is amended  
34 and renumbered to read:

35 ~~1208.~~

36 1309. A term providing that one party or ~~his that party’s~~  
37 successor in interest may accelerate payment or performance or  
38 require collateral or additional collateral “at will” or “when ~~he~~  
39 ~~the party~~ “deems ~~himself~~ itself insecure,” or in words of similar  
40 import ~~shall be construed to mean that he shall have, means that~~

1 *the party has power to do so only if ~~he~~ that party in good faith*  
2 *believes that the prospect of payment or performance is impaired.*  
3 *The burden of establishing lack of good faith is on the party*  
4 *against ~~whom~~ which the power has been exercised.*

5 *SEC. 23. Section 1209 of the Commercial Code is amended*  
6 *and renumbered to read:*

7 ~~1209.~~

8 *1310. An obligation may be issued as subordinated to*  
9 *~~payment~~ performance of another obligation of the person*  
10 *obligated, or a creditor may subordinate ~~his~~ its right to ~~payment~~*  
11 *performance of an obligation by agreement with either the person*  
12 *obligated or another creditor of the person obligated. ~~Such a~~*  
13 *~~subordination~~ Subordination does not create a security interest as*  
14 *against either the common debtor or a subordinated creditor. ~~This~~*  
15 *~~section shall be construed as declaring the law as it existed prior~~*  
16 *~~to the enactment of this section and not as modifying it.~~*

17 *SEC. 24. Section 1210 of the Commercial Code is repealed.*

18 ~~1210. Except as otherwise provided in Section 1202, the~~  
19 ~~presumptions established by this code are presumptions affecting~~  
20 ~~the burden of producing evidence.~~

21 *SEC. 25. Chapter 3 (commencing with Section 1301) is added*  
22 *to Division 1 of the Commercial Code, to read:*

23  
24 *CHAPTER 3. TERRITORIAL APPLICABILITY AND GENERAL*  
25 *RULES*  
26

27 *1301. (a) In this section:*

28 *(1) "Domestic transaction" means a transaction other than an*  
29 *international transaction.*

30 *(2) "International transaction" means a transaction that*  
31 *bears a reasonable relation to a country other than the United*  
32 *States.*

33 *(b) This section applies to a transaction to the extent that it is*  
34 *governed by another division of this code.*

35 *(c) Except as otherwise provided by this section:*

36 *(1) an agreement by parties to a domestic transaction that any*  
37 *or all of their rights and obligations are to be determined by the*  
38 *law of this state or of another state is effective, whether or not*  
39 *the transaction bears a relation to the state designated; and*

1 (2) *an agreement by parties to an international transaction*  
2 *that any or all of their rights and obligations are to be*  
3 *determined by the law of this state or of another state or country*  
4 *is effective, whether or not the transaction bears a relation to the*  
5 *state or country designated.*

6 (d) *In the absence of an agreement effective under subdivision*  
7 *(c), and except as provided in subdivisions (e) and (g), the rights*  
8 *and obligations of the parties are determined by the law that*  
9 *would be selected by application of the state's conflict of laws*  
10 *principles.*

11 (e) *If one of the parties to a transaction is a consumer, the*  
12 *following rules apply:*

13 (1) *An agreement referred to in subdivision (c) is not effective*  
14 *unless the transaction bears a reasonable relation to the state or*  
15 *country designated.*

16 (2) *Application of the law of the state or country determined*  
17 *pursuant to subdivision (c) or (d) may not deprive the consumer*  
18 *of the protection of any rule of law governing a matter within the*  
19 *scope of this section, which both is protective of consumers and*  
20 *may not be varied by agreement:*

21 (A) *of the state or country in which the consumer principally*  
22 *resides, unless subparagraph (B) applies; or*

23 (B) *if the transaction is a sale of goods, of the state or country*  
24 *in which the consumer both makes the contract and takes*  
25 *delivery of those goods, if such state or country is not the state or*  
26 *country in which the consumer principally resides.*

27 (f) *An agreement otherwise effective under subdivision (c) is*  
28 *not effective to the extent that application of the law of the state*  
29 *or country designated would be contrary to a fundamental policy*  
30 *of the state or country whose law would govern in the absence of*  
31 *agreement under subdivision (d).*

32 (g) *To the extent that this code governs a transaction, if one of*  
33 *the following provisions of this code specifies the applicable law,*  
34 *that provision governs and a contrary agreement is effective only*  
35 *to the extent permitted by the law so specified:*

36 (1) *Section 2402;*

37 (2) *Sections 10105 and 10106;*

38 (3) *Section 4102;*

39 (4) *Section 11507;*

40 (5) *Section 5116;*



1 (6) Section 6103;

2 (7) Section 8110;

3 (8) Sections 9301 to 9307, inclusive.

4 1302. (a) Except as otherwise provided in subdivision (b) or  
5 elsewhere in this code, the effect of provisions of this code may  
6 be varied by agreement.

7 (b) The obligations of good faith, diligence, reasonableness,  
8 and care prescribed by this code may not be disclaimed by  
9 agreement. The parties, by agreement, may determine the  
10 standards by which the performance of those obligations is to be  
11 measured if those standards are not manifestly unreasonable.  
12 Whenever this code requires an action to be taken within a  
13 reasonable time, a time that is not manifestly unreasonable may  
14 be fixed by agreement.

15 (c) The presence of certain provisions of this code of the  
16 phrase “unless otherwise agreed,” or words of similar import,  
17 does not imply that the effect of other provisions may not be  
18 varied by agreement under this section.

19 SEC. 26. Section 2103 of the Commercial Code is amended to  
20 read:

21 2103. (1) In this division unless the context otherwise  
22 requires:

23 (a) “Buyer” means a person who buys or contracts to buy  
24 goods.

25 ~~(b) “Good faith” in the case of a merchant means honesty in~~  
26 ~~fact and the observance of reasonable commercial standards of~~  
27 ~~fair dealing in the trade. [Reserved]~~

28 (c) “Receipt” of goods means taking physical possession of  
29 them.

30 (d) “Seller” means a person who sells or contracts to sell  
31 goods.

32 (2) Other definitions applying to this division or to specified  
33 chapters thereof, and the sections in which they appear are:

34 “Acceptance.” Section 2606.

35 “Banker’s credit.” Section 2325.

36 “Between merchants.” Section 2104.

37 “Cancellation.” Section 2106(4).

38 “Commercial unit.” Section 2105.

39 “Confirmed credit.” Section 2325.

40 “Conforming to contract.” Section 2106.

1 “Contract for sale.” Section 2106.  
2 “Cover.” Section 2712.  
3 “Entrusting.” Section 2403.  
4 “Financing agency.” Section 2104.  
5 “Future goods.” Section 2105.  
6 “Goods.” Section 2105.  
7 “Identification.” Section 2501.  
8 “Installment contract.” Section 2612.  
9 “Letter of Credit.” Section 2325.  
10 “Lot.” Section 2105.  
11 “Merchant.” Section 2104.  
12 “Overseas.” Section 2323.  
13 “Person in position of seller.” Section 2707.  
14 “Present sale.” Section 2106.  
15 “Sale.” Section 2106.  
16 “Sale on approval.” Section 2326.  
17 “Sale or return.” Section 2326.  
18 “Termination.” Section 2106.

19 (3) The following definitions in other divisions apply to this  
20 division:

21 “Check.” Section 3104.  
22 “Consignee.” Section 7102.  
23 “Consignor.” Section 7102.  
24 “Consumer goods.” Section 9102.  
25 “*Control.*” Section 7106.  
26 “Dishonor.” Section 3502.  
27 “Draft.” Section 3104.

28 (4) In addition Division 1 (*commencing with Section 1101*)  
29 contains general definitions and principles of construction and  
30 interpretation applicable throughout this division.

31 *SEC. 27. Section 2104 of the Commercial Code is amended to*  
32 *read:*

33 2104. (1) “Merchant” means a person who deals in goods of  
34 the kind or otherwise by his occupation holds himself out as  
35 having knowledge or skill peculiar to the practices or goods  
36 involved in the transaction or to whom such knowledge or skill  
37 may be attributed by his employment of an agent or broker or  
38 other intermediary who by his occupation holds himself out as  
39 having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany *or are associated with* the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

SEC. 28. *Section 2202 of the Commercial Code is amended to read:*

2202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) By course of dealing, *course of performance*, or usage of trade (Section 1205) ~~or by course of performance (Section 2208) 1303~~; and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

SEC. 29. *Section 2208 of the Commercial Code is repealed.*

~~2208. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.~~

~~(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each~~

1 other; but when such construction is unreasonable, express terms  
2 shall control course of performance and course of performance  
3 shall control both course of dealing and usage of trade (Section  
4 1205).

5 (3) Subject to the provisions of the next section on  
6 modification and waiver, such course of performance shall be  
7 relevant to show a waiver or modification of any term  
8 inconsistent with such course of performance.

9 *SEC. 30. Section 2310 of the Commercial Code is amended to*  
10 *read:*

11 2310. Unless otherwise agreed:

12 (a) Payment is due at the time and place at which the buyer is  
13 to receive the goods even though the place of shipment is the  
14 place of delivery; and

15 (b) If the seller is authorized to send the goods he may ship  
16 them under reservation, and may tender the documents of title,  
17 but the buyer may inspect the goods after their arrival before  
18 payment is due unless such inspection is inconsistent with the  
19 terms of the contract (Section 2513); and

20 (c) If delivery is authorized and made by way of documents of  
21 title otherwise than by subdivision (b) then payment is due  
22 *regardless of where the goods are to be received (i) at the time*  
23 *and place at which the buyer is to receive delivery of the tangible*  
24 *documents regardless of where the goods are to be received or*  
25 *(ii) at the time the buyer is to receive delivery of the electronic*  
26 *documents and at the seller's place of business or if none, the*  
27 *seller's residence; and*

28 (d) Where the seller is required or authorized to ship the goods  
29 on credit the credit period runs from the time of shipment but  
30 postdating the invoice or delaying its dispatch will  
31 correspondingly delay the starting of the credit period.

32 *SEC. 31. Section 2323 of the Commercial Code is amended to*  
33 *read:*

34 2323. (1) Where the contract contemplates overseas  
35 shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel,  
36 the seller unless otherwise agreed must obtain a negotiable bill of  
37 lading stating that the goods have been loaded on board or, in the  
38 case of a term C.I.F. or C. & F., received for shipment.

39 (2) Where in a case within subdivision (1) a *tangible* bill of  
40 lading has been issued in a set of parts, unless otherwise agreed if

1 the documents are not to be sent from abroad the buyer may  
2 demand tender of the full set; otherwise only one part of the bill  
3 of lading need be tendered. Even if the agreement expressly  
4 requires a full set

5 (a) Due tender of a single part is acceptable within the  
6 provisions of this division on cure of improper delivery  
7 (subdivision (1) of Section 2508); and

8 (b) Even though the full set is demanded, if the documents are  
9 sent from abroad the person tendering an incomplete set may  
10 nevertheless require payment upon furnishing an indemnity  
11 which the buyer in good faith deems adequate.

12 (3) A shipment by water or by air or a contract contemplating  
13 such shipment is “overseas” insofar as by usage of trade or  
14 agreement it is subject to the commercial, financing or shipping  
15 practices characteristic of international deepwater commerce.

16 *SEC. 32. Section 2401 of the Commercial Code is amended to*  
17 *read:*

18 2401. Each provision of this division with regard to the  
19 rights, obligations and remedies of the seller, the buyer,  
20 purchasers or other third parties applies irrespective of title to the  
21 goods except where the provision refers to such title. Insofar as  
22 situations are not covered by the other provisions of this division  
23 and matters concerning title become material the following rules  
24 apply:

25 (1) Title to goods cannot pass under a contract for sale prior to  
26 their identification to the contract (Section 2501), and unless  
27 otherwise explicitly agreed the buyer acquires by their  
28 identification a special property as limited by this code. Any  
29 retention or reservation by the seller of the title (property) in  
30 goods shipped or delivered to the buyer is limited in effect to a  
31 reservation of a security interest. Subject to these provisions and  
32 to the provisions of the division on secured transactions (Division  
33 9), title to goods passes from the seller to the buyer in any  
34 manner and on any conditions explicitly agreed on by the parties.

35 (2) Unless otherwise explicitly agreed title passes to the buyer  
36 at the time and place at which the seller completes his  
37 performance with reference to the physical delivery of the goods,  
38 despite any reservation of a security interest and even though a  
39 document of title is to be delivered at a different time or place;

1 and in particular and despite any reservation of a security interest  
2 by the bill of lading

3 (a) If the contract requires or authorizes the seller to send the  
4 goods to the buyer but does not require him to deliver them at  
5 destination, title passes to the buyer at the time and place of  
6 shipment; but

7 (b) If the contract requires delivery at destination, title passes  
8 on tender there.

9 (3) Unless otherwise explicitly agreed where delivery is to be  
10 made without moving the goods,

11 (a) If the seller is to deliver a *tangible* document of title, title  
12 passes at the time when and the place where he delivers such  
13 documents *and if the seller is to deliver an electronic document*  
14 *of title, title passes when the seller delivers the document; or*

15 (b) If the goods are at the time of contracting already  
16 identified and no documents *of title* are to be delivered, title  
17 passes at the time and place of contracting.

18 (4) A rejection or other refusal by the buyer to receive or  
19 retain the goods, whether or not justified, or a justified revocation  
20 of acceptance reverts title to the goods in the seller. Such  
21 reversion occurs by operation of law and is not a “sale.”

22 SEC. 33. Section 2503 of the Commercial Code is amended to  
23 read:

24 2503. (1) Tender of delivery requires that the seller put and  
25 hold conforming goods at the buyer’s disposition and give the  
26 buyer any notification reasonably necessary to enable him to take  
27 delivery. The manner, time and place for tender are determined  
28 by the agreement and this division, and in particular

29 (a) Tender must be at a reasonable hour, and if it is of goods  
30 they must be kept available for the period reasonably necessary  
31 to enable the buyer to take possession; but

32 (b) Unless otherwise agreed the buyer must furnish facilities  
33 reasonably suited to the receipt of the goods.

34 (2) Where the case is within the next section respecting  
35 shipment tender requires that the seller comply with its  
36 provisions.

37 (3) Where the seller is required to deliver at a particular  
38 destination tender requires that he comply with subdivision (1)  
39 and also in any appropriate case tender documents as described  
40 in subdivisions (4) and (5) of this section.

1 (4) Where goods are in the possession of a bailee and are to be  
2 delivered without being moved

3 (a) Tender requires that the seller either tender a negotiable  
4 document of title covering such goods or procure  
5 acknowledgment by the bailee of the buyer's right to possession  
6 of the goods; but

7 (b) Tender to the buyer of a nonnegotiable document of title or  
8 of ~~a written direction to record directing~~ the bailee to deliver is  
9 sufficient tender unless the buyer seasonably objects, and *except*  
10 *as otherwise provided in Division 9 (commencing with Section*  
11 *9101)*, receipt by the bailee of notification of the buyer's rights  
12 fixes those rights as against the bailee and all third persons; but  
13 risk of loss of the goods and of any failure by the bailee to honor  
14 the nonnegotiable document of title or to obey the direction  
15 remains on the seller until the buyer has had a reasonable time to  
16 present the document or direction, and a refusal by the bailee to  
17 honor the document or to obey the direction defeats the tender.

18 (5) Where the contract requires the seller to deliver documents

19 (a) He must tender all such documents in correct form, except  
20 as provided in this division with respect to bills of lading in a set  
21 (subdivision (2) of Section 2323); and

22 (b) Tender through customary banking channels is sufficient  
23 and dishonor of a draft accompanying *or associated with* the  
24 documents constitutes nonacceptance or rejection.

25 *SEC. 34. Section 2505 of the Commercial Code is amended to*  
26 *read:*

27 2505. (1) Where the seller has identified goods to the  
28 contract by or before shipment:

29 (a) His procurement of a negotiable bill of lading to his own  
30 order or otherwise reserves in him a security interest in the  
31 goods. His procurement of the bill to the order of a financing  
32 agency or of the buyer indicates in addition only the seller's  
33 expectation of transferring that interest to the person named.

34 (b) A nonnegotiable bill of lading to himself or his nominee  
35 reserves possession of the goods as security but except in a case  
36 of conditional delivery (subdivision (2) of Section 2507) a  
37 nonnegotiable bill of lading naming the buyer as consignee  
38 reserves no security interest even though the seller retains  
39 possession *or control* of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document *of title*.

*SEC. 35. Section 2506 of the Commercial Code is amended to read:*

2506. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~on its face~~.

*SEC. 36. Section 2509 of the Commercial Code is amended to read:*

2509. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2505); but

(b) If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) On his receipt of *possession or control* of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or



1 (c) After his receipt of *possession or control* of a  
2 nonnegotiable document of title or other ~~written~~ direction to  
3 deliver *in a record*, as provided in subdivision (4)(b) of Section  
4 2503.

5 (3) In any case not within subdivision (1) or (2), the risk of  
6 loss passes to the buyer on his receipt of the goods if the seller is  
7 a merchant; otherwise the risk passes to the buyer on tender of  
8 delivery.

9 (4) The provisions of this section are subject to contrary  
10 agreement of the parties and to the provisions of this division on  
11 sale on approval (Section 2327) and on effect of breach on risk of  
12 loss (Section 2510).

13 *SEC. 37. Section 2605 of the Commercial Code is amended to*  
14 *read:*

15 2605. (1) The buyer's failure to state in connection with  
16 rejection a particular defect which is ascertainable by reasonable  
17 inspection precludes him from relying on the unstated defect to  
18 justify rejection or to establish breach

19 (a) Where the seller could have cured it if stated seasonably;  
20 or

21 (b) Between merchants when the seller has after rejection  
22 made a request in writing for a full and final written statement of  
23 all defects on which the buyer proposes to rely.

24 (2) Payment against documents made without reservation of  
25 rights precludes recovery of the payment for defects apparent ~~on~~  
26 ~~the face of~~ *in* the documents.

27 *SEC. 38. Section 2705 of the Commercial Code is amended to*  
28 *read:*

29 2705. (1) The seller may stop delivery of goods in the  
30 possession of a carrier or other bailee when he discovers the  
31 buyer to be insolvent (Section 2702) and may stop delivery of  
32 carload, truckload, planeload or larger shipments of express or  
33 freight when the buyer repudiates or fails to make a payment due  
34 before delivery or if for any other reason the seller has a right to  
35 withhold or reclaim the goods.

36 (2) As against such buyer the seller may stop delivery until

37 (a) Receipt of the goods by the buyer; or

38 (b) Acknowledgment to the buyer by any bailee of the goods  
39 except a carrier that the bailee holds the goods for the buyer; or

1 (c) Such acknowledgment to the buyer by a carrier by  
2 reshipment or as ~~warehouseman~~ *a warehouse*; or

3 (d) Negotiation to the buyer of any negotiable document of  
4 title covering the goods.

5 (3) (a) To stop delivery the seller must so notify as to enable  
6 the bailee by reasonable diligence to prevent delivery of the  
7 goods.

8 (b) After such notification the bailee must hold and deliver the  
9 goods according to the directions of the seller but the seller is  
10 liable to the bailee for any ensuing charges or damages.

11 (c) If a negotiable document of title has been issued for goods  
12 the bailee is not obliged to obey a notification to stop until  
13 surrender of *possession or control* of the document.

14 (d) A carrier who has issued a nonnegotiable bill of lading is  
15 not obliged to obey a notification to stop received from a person  
16 other than the consignor.

17 *SEC. 39. Section 3103 of the Commercial Code is amended to*  
18 *read:*

19 3103. (a) In this division:

20 (1) “Acceptor” means a drawee who has accepted a draft.

21 (2) “Drawee” means a person ordered in a draft to make  
22 payment.

23 (3) “Drawer” means a person who signs or is identified in a  
24 draft as a person ordering payment.

25 (4) ~~“Good faith” means honesty in fact and the observance of~~  
26 ~~reasonable commercial standards of fair dealing.~~ *[Reserved]*

27 (5) “Maker” means a person who signs or is identified in a  
28 note as a person undertaking to pay.

29 (6) “Order” means a written instruction to pay money signed  
30 by the person giving the instruction. The instruction may be  
31 addressed to any person, including the person giving the  
32 instruction, or to one or more persons jointly or in the alternative  
33 but not in succession. An authorization to pay is not an order  
34 unless the person authorized to pay is also instructed to pay.

35 (7) “Ordinary care” in the case of a person engaged in  
36 business means observance of reasonable commercial standards,  
37 prevailing in the area in which the person is located, with respect  
38 to the business in which the person is engaged. In the case of a  
39 bank that takes an instrument for processing for collection or  
40 payment by automated means, reasonable commercial standards

do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this division or Division 4 (commencing with Section 4101).

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact—~~(subdivision (8) (paragraph (8) of subdivision (b) of Section 1201).~~

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this division and the sections in which they appear are:

"Acceptance"	Section 3409
"Accommodated party"	Section 3419
"Accommodation party"	Section 3419
"Alteration"	Section 3407
"Anomalous endorsement"	Section 3205
"Blank endorsement"	Section 3205
"Cashier's check"	Section 3104
"Certificate of deposit"	Section 3104
"Certified check"	Section 3409
"Check"	Section 3104
"Consideration"	Section 3303
"Demand Draft"	Section 3104
"Draft"	Section 3104
"Holder in due course"	Section 3302
"Incomplete instrument"	Section 3115
"Indorsement"	Section 3204
"Indorser"	Section 3204
"Instrument"	Section 3104
"Issue"	Section 3105
"Issuer"	Section 3105
"Negotiable instrument"	Section 3104

1	“Negotiation”	Section 3201
2	“Note”	Section 3104
3	“Payable at a definite time”	Section 3108
4	“Payable on demand”	Section 3108
5	“Payable to bearer”	Section 3109
6	“Payable to order”	Section 3109
7	“Payment”	Section 3602
8	“Person entitled to enforce”	Section 3301
9	“Presentment”	Section 3501
10	“Reacquisition”	Section 3207
11	“Special indorsement”	Section 3205
12	“Teller’s check”	Section 3104
13	“Transfer of instrument”	Section 3203
14	“Traveler’s check”	Section 3104
15	“Value”	Section 3303
16		
17	(c) The following definitions in other divisions apply to this	
18	division:	
19		
20	“Bank”	Section 4105
21	“Banking day”	Section 4104
22	“Clearinghouse”	Section 4104
23	“Collecting bank”	Section 4105
24	“Depository bank”	Section 4105
25	“Documentary draft”	Section 4104
26	“Intermediary bank”	Section 4105
27	“Item”	Section 4104
28	“Payor bank”	Section 4105
29	“Suspends payments”	Section 4104
30		
31	(d) In addition, Division 1 (commencing with Section 1101)	
32	contains general definitions and principles of construction and	
33	interpretation applicable throughout this division.	
34	<i>SEC. 40. Section 4104 of the Commercial Code is amended to</i>	
35	<i>read:</i>	
36	4104. (a) In this division unless the context otherwise	
37	requires:	
38	(1) “Account” means any deposit or credit account with a	
39	bank, including a demand, time, savings, passbook, share draft,	

1 or like account, other than an account evidenced by a certificate  
2 of deposit.

3 (2) “Afternoon” means the period of a day between noon and  
4 midnight.

5 (3) “Banking day” means the part of a day on which a bank is  
6 open to the public for carrying on substantially all of its banking  
7 functions.

8 (4) “Clearing house” means an association of banks or other  
9 payors regularly clearing items.

10 (5) “Customer” means a person having an account with a bank  
11 or for whom a bank has agreed to collect items, including a bank  
12 that maintains an account at another bank.

13 (6) “Documentary draft” means a draft to be presented for  
14 acceptance or payment if specified documents, certificated  
15 securities (Section 8102) or instructions for uncertificated  
16 securities (Section 8102), or other certificates, statements, or the  
17 like are to be received by the drawee or other payor before  
18 acceptance or payment of the draft.

19 (7) “Draft” means a draft as defined in Section 3104 or an  
20 item, other than an instrument, that is an order.

21 (8) “Drawee” means a person ordered in a draft to make  
22 payment.

23 (9) “Item” means an instrument or a promise or order to pay  
24 money handled by a bank for collection or payment. The term  
25 does not include a payment order governed by Division 11  
26 (commencing with Section 11101) or a credit or debit card slip.

27 (10) “Midnight deadline” with respect to a bank is midnight on  
28 its next banking day following the banking day on which it  
29 receives the relevant item or notice or from which the time for  
30 taking action commences to run, whichever is later.

31 (11) “Settle” means to pay in cash, by clearinghouse  
32 settlement, in a charge or credit or by remittance, or otherwise as  
33 agreed. A settlement may be either provisional or final.

34 (12) “Suspends payments” with respect to a bank means that it  
35 has been closed by order of the supervisory authorities, that a  
36 public officer has been appointed to take it over or that it ceases  
37 or refuses to make payments in the ordinary course of business.

38 (b) Other definitions applying to this division and the sections  
39 in which they appear are:

1	“Agreement for electronic presentment”	Section 4110
2	“Bank”	Section 4105
3	“Collecting bank”	Section 4105
4	“Depository bank”	Section 4105
5	“Intermediary bank”	Section 4105
6	“Payor bank”	Section 4105
7	“Presenting bank”	Section 4105
8	“Presentment notice”	Section 4110
9		

10 (c) The following definitions in other divisions apply to this  
11 division:

12		
13	“Acceptance”	Section 3409
14	“Alteration”	Section 3407
15	“Cashier’s check”	Section 3104
16	“Certificate of deposit”	Section 3104
17	“Certified check”	Section 3409
18	“Check”	Section 3104
19	“Control”	Section 7106
20	<del>“Good faith”</del>	<del>Section 3103</del>
21	“Holder in due course”	Section 3302
22	“Instrument”	Section 3104
23	“Notice of dishonor”	Section 3503
24	“Order”	Section 3103
25	“Ordinary care”	Section 3103
26	“Person entitled to enforce”	Section 3301
27	“Presentment”	Section 3501
28	“Promise”	Section 3103
29	“Prove”	Section 3103
30	“Teller’s check”	Section 3104
31	“Unauthorized signature”	Section 3403
32		

33 (d) In addition, Division 1 (commencing with Section 1101)  
34 contains general definitions and principles of construction and  
35 interpretation applicable throughout this division.

36 *SEC. 41. Section 4210 of the Commercial Code is amended to*  
37 *read:*

38 4210. (a) A collecting bank has a security interest in an item  
39 and any accompanying documents or the proceeds of either:

1 (1) In case of an item deposited in an account to the extent to  
2 which credit given for the item has been withdrawn or applied.

3 (2) In case of an item for which it has given credit available  
4 for withdrawal as of right, to the extent of the credit given,  
5 whether or not the credit is drawn upon or there is a right of  
6 chargeback.

7 (3) If it makes an advance on or against the item.

8 (b) If credit given for several items received at one time or  
9 pursuant to a single agreement is withdrawn or applied in part,  
10 the security interest remains upon all the items, any  
11 accompanying documents or the proceeds of either. For the  
12 purpose of this section, credits first given are first withdrawn.

13 (c) Receipt by a collecting bank of a final settlement for an  
14 item is a realization on its security interest in the item,  
15 accompanying documents, and proceeds. So long as the bank  
16 does not receive final settlement for the item or give up  
17 possession of the item or *possession or control of the*  
18 accompanying documents for purposes other than collection, the  
19 security interest continues to that extent and is subject to  
20 Division 9 (commencing with Section 9101), but all of the  
21 following are applicable:

22 (1) No security agreement is necessary to make the security  
23 interest enforceable (subparagraph (A) of paragraph (3) of  
24 subdivision (b) of Section 9203).

25 (2) No filing is required to perfect the security interest.

26 (3) The security interest has priority over conflicting perfected  
27 security interests in the item, accompanying documents, or  
28 proceeds.

29 *SEC. 42. Section 5103 of the Commercial Code is amended to*  
30 *read:*

31 5103. (a) This division applies to letters of credit and to  
32 certain rights and obligations arising out of transactions  
33 involving letters of credit.

34 (b) The statement of a rule in this division does not by itself  
35 require, imply, or negate application of the same or a different  
36 rule to a situation not provided for, or to a person not specified,  
37 in this division.

38 (c) With the exception of this subdivision, subdivisions (a) and  
39 (d), paragraphs 9 and 10 of subdivision (a) of Section 5102,  
40 subdivision (d) of Section 5106, and subdivision (d) of Section

5114, and except to the extent prohibited in ~~subdivision (3) of~~  
Section ~~1102~~ 1302 and subdivision (d) of Section 5117, the effect  
of this division may be varied by agreement or by a provision  
stated or incorporated by reference in an undertaking. A term in  
an agreement or undertaking generally excusing liability or  
generally limiting remedies for failure to perform obligations is  
not sufficient to vary obligations prescribed by this division.

(d) Rights and obligations of an issuer to a beneficiary or a  
nominated person under a letter of credit are independent of the  
existence, performance, or nonperformance of a contract or  
arrangement out of which the letter of credit arises or which  
underlies it, including contracts or arrangements between the  
issuer and the applicant and between the applicant and the  
beneficiary.

*SEC. 43. Division 7 (commencing with Section 7101) of the  
Commercial Code is repealed.*

*SEC. 44. Division 7 (commencing with Section 7101) is  
added to the Commercial Code, to read:*

## *DIVISION 7. DOCUMENTS OF TITLE*

### *CHAPTER 1. GENERAL*

*7101. This division may be cited as Uniform Commercial  
Code-Documents of Title.*

*7102. (a) In this division, unless the context otherwise  
requires:*

*(1) "Bailee" means a person that by a warehouse receipt, bill  
of lading, or other document of title acknowledges possession of  
goods and contracts to deliver them.*

*(2) "Carrier" means a person that issues a bill of lading.*

*(3) "Consignee" means a person named in a bill of lading to  
which or to whose order the bill promises delivery.*

*(4) "Consignor" means a person named in a bill of lading as  
the person from which the goods have been received for  
shipment.*

*(5) "Delivery order" means a record that contains an order to  
deliver goods directed to a warehouse, carrier, or other person  
that in the ordinary course of business issues warehouse receipts  
or bills of lading.*



1 (6) “Good faith” means honesty in fact and the observance of  
2 reasonable commercial standards of fair dealing.

3 (7) “Goods” means all things that are treated as movable for  
4 the purposes of a contract for storage or transportation.

5 (8) “Issuer” means a bailee that issues a document of title or;  
6 in the case of an unaccepted delivery order, the person that  
7 orders the possessor of goods to deliver. The term includes a  
8 person for which an agent or employee purports to act in issuing  
9 a document if the agent or employee has real or apparent  
10 authority to issue documents, even if the issuer did not receive  
11 any goods, the goods were misdescribed, or in any other respect  
12 the agent or employee violated the issuer’s instructions.

13 (9) “Person entitled under the document” means the holder; in  
14 the case of a negotiable document of title, or the person to which  
15 delivery of the goods is to be made by the terms of, or pursuant to  
16 instructions in a record under, a nonnegotiable document of title.

17 (10) “Record” means information that is inscribed on a  
18 tangible medium or that is stored in an electronic or other  
19 medium and is retrievable in perceivable form.

20 (11) “Sign” means, with present intent to authenticate or  
21 adopt a record:

22 (A) to execute or adopt a tangible symbol; or

23 (B) to attach to or logically associate with the record an  
24 electronic sound, symbol, or process.

25 (12) “Shipper” means a person that enters into a contract of  
26 transportation with a carrier.

27 (13) “Warehouse” means a person engaged in the business of  
28 storing goods for hire.

29 (b) Definitions in other divisions applying to this division and  
30 the sections in which they appear are:

31 (1) “Contract for sale,” Section 2106.

32 (2) “Lessee in the ordinary course of business”, Section  
33 10103.

34 (3) “Receipt” of goods, Section 2103.

35 (c) In addition, Division 1 (commencing with Section 1101)  
36 contains general definitions and principles of construction and  
37 interpretation applicable throughout this division.

38 7103. (a) This division is subject to any treaty or statute of  
39 the United States or regulatory statute of this state to the extent  
40 the treaty, statute, or regulatory statute is applicable.

1 (b) This division does not modify or repeal any law  
2 prescribing the form or content of a document of title or the  
3 services or facilities to be afforded by a bailee, or otherwise  
4 regulating a bailee's business in respects not specifically treated  
5 in this division. However, violation of such a law does not affect  
6 the status of a document of title that otherwise is within the  
7 definition of a document of title.

8 (c) This division modifies, limits, and supersedes the federal  
9 Electronic Signatures in Global and National Commerce Act (15  
10 U.S.C. Sec. 7001, et seq.) but does not modify, limit, or supersede  
11 Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize  
12 electronic delivery of any of the notices described in Section  
13 103(b) of that act (15 U.S.C. Sec. 7003(b)).

14 (d) To the extent there is a conflict between the Uniform  
15 Electronic Transactions Act (Title 2.5 (commencing with Section  
16 1633.1) of Part 2 of Division 3 of the Civil Code) and this  
17 division, this division governs.

18 7104. (a) Except as otherwise provided in subdivision (c), a  
19 document of title is negotiable if by its terms the goods are to be  
20 delivered to bearer or to the order of a named person.

21 (b) A document of title other than one described in subdivision  
22 (a) is nonnegotiable. A bill of lading that states that the goods  
23 are consigned to a named person is not made negotiable by a  
24 provision that the goods are to be delivered only against an  
25 order in a record signed by the same or another named person.

26 (c) A document of title is nonnegotiable if, at the time it is  
27 issued, the document has a conspicuous legend, however  
28 expressed, that it is nonnegotiable.

29 7105. (a) Upon request of a person entitled under an  
30 electronic document of title, the issuer of the electronic document  
31 may issue a tangible document of title as a substitute for the  
32 electronic document if:

33 (1) the person entitled under the electronic document  
34 surrenders control of the document to the issuer; and

35 (2) the tangible document when issued contains a statement  
36 that it is issued in substitution for the electronic document.

37 (b) Upon issuance of a tangible document of title in  
38 substitution for an electronic document of title in accordance  
39 with subdivision (a):

1     *(1) the electronic document ceases to have any effect or*  
2     *validity; and*

3     *(2) the person that procured issuance of the tangible document*  
4     *warrants to all subsequent persons entitled under the tangible*  
5     *document that the warrantor was a person entitled under the*  
6     *electronic document when the warrantor surrendered control of*  
7     *the electronic document to the issuer.*

8     *(c) Upon request of a person entitled under a tangible*  
9     *document of title, the issuer of the tangible document may issue*  
10    *an electronic document of title as a substitute for the tangible*  
11    *document if:*

12    *(1) the person entitled under the tangible document surrenders*  
13    *possession of the document to the issuer; and*

14    *(2) the electronic document when issued contains a statement*  
15    *that it is issued in substitution for the tangible document.*

16    *(d) Upon issuance of an electronic document of title in*  
17    *substitution for a tangible document of title in accordance with*  
18    *subdivision (c):*

19    *(1) the tangible document ceases to have any effect or validity;*  
20    *and*

21    *(2) the person that procured issuance of the electronic*  
22    *document warrants to all subsequent persons entitled under the*  
23    *electronic document that the warrantor was a person entitled*  
24    *under the tangible document when the warrantor surrendered*  
25    *possession of the tangible document to the issuer.*

26    7106. *(a) A person has control of an electronic document of*  
27    *title if a system employed for evidencing the transfer of interests*  
28    *in the electronic document reliably establishes that person as the*  
29    *person to which the electronic document was issued or*  
30    *transferred.*

31    *(b) A system satisfies subdivision (a), and a person is deemed*  
32    *to have control of an electronic document of title, if the document*  
33    *is created, stored, and assigned in such a manner that:*

34    *(1) a single authoritative copy of the document exists which is*  
35    *unique, identifiable, and, except as otherwise provided in*  
36    *paragraphs (4), (5), and (6), unalterable;*

37    *(2) the authoritative copy identifies the person asserting*  
38    *control as:*

39    *(A) the person to which the document was issued; or*

1 (B) if the authoritative copy indicates that the document has  
2 been transferred, the person to which the document was most  
3 recently transferred;

4 (3) the authoritative copy is communicated to and maintained  
5 by the person asserting control or its designated custodian;

6 (4) copies or amendments that add or change an identified  
7 assignee of the authoritative copy can be made only with the  
8 consent of the person asserting control;

9 (5) each copy of the authoritative copy and any copy of a copy  
10 is readily identifiable as a copy that is not the authoritative copy;  
11 and

12 (6) any amendment of the authoritative copy is readily  
13 identifiable as authorized or unauthorized.

14  
15 *CHAPTER 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS*

16  
17 7201. (a) A warehouse receipt may be issued by any  
18 warehouse.

19 (b) If goods, including distilled spirits and agricultural  
20 commodities, are stored under a statute requiring a bond against  
21 withdrawal or a license for the issuance of receipts in the nature  
22 of warehouse receipts, a receipt issued for the goods is deemed  
23 to be a warehouse receipt even if issued by a person that is the  
24 owner of the goods and is not a warehouse.

25 7202. (a) A warehouse receipt need not be in any particular  
26 form.

27 (b) Unless a warehouse receipt provides for each of the  
28 following, the warehouse is liable for damages caused to a  
29 person injured by its omission:

30 (1) a statement of the location of the warehouse facility where  
31 the goods are stored;

32 (2) the date of issue of the receipt;

33 (3) the unique identification code of the receipt;

34 (4) a statement whether the goods received will be delivered to  
35 the bearer, to a named person, or to a named person or its order;

36 (5) the rate of storage and handling charges, unless goods are  
37 stored under a field warehousing arrangement, in which case a  
38 statement of that fact is sufficient on a nonnegotiable receipt;

39 (6) a description of the goods or the packages containing  
40 them;

1     (7) *the signature of the warehouse or its agent;*

2     (8) *if the receipt is issued for goods that the warehouse owns,*  
3 *either solely, jointly, or in common with others, a statement of*  
4 *the fact of that ownership; and*

5     (9) *a statement of the amount of advances made and of*  
6 *liabilities incurred for which the warehouse claims a lien or*  
7 *security interest, unless the precise amount of advances made or*  
8 *liabilities incurred, at the time of the issue of the receipt, is*  
9 *unknown to the warehouse or to its agent that issued the receipt,*  
10 *in which case a statement of the fact that advances have been*  
11 *made or liabilities incurred and the purpose of the advances or*  
12 *liabilities is sufficient.*

13     (c) *A warehouse may insert in its receipt any terms that are*  
14 *not contrary to the provisions of this code and do not impair its*  
15 *obligation of delivery under Section 7403 or its duty of care*  
16 *under Section 7204. Any contrary provision is ineffective.*

17     7203. *A party to or purchaser for value in good faith of a*  
18 *document of title, other than a bill of lading, that relies upon the*  
19 *description of the goods in the document may recover from the*  
20 *issuer damages caused by the nonreceipt or misdescription of the*  
21 *goods, except to the extent that:*

22     (1) *the document conspicuously indicates that the issuer does*  
23 *not know whether all or part of the goods in fact were received*  
24 *or conform to the description, such as a case in which the*  
25 *description is in terms of marks or labels or kind, quantity, or*  
26 *condition, or the receipt or description is qualified by “contents,*  
27 *condition, and quality unknown,” “said to contain,” or words of*  
28 *similar import, if the indication is true; or*

29     (2) *the party or purchaser otherwise has notice of the*  
30 *nonreceipt or misdescription.*

31     7204. (a) *A warehouse is liable for damages for loss of or*  
32 *injury to the goods caused by its failure to exercise care with*  
33 *regard to the goods that a reasonably careful person would*  
34 *exercise under similar circumstances. Unless otherwise agreed,*  
35 *the warehouse is not liable for damages that could not have been*  
36 *avoided by the exercise of that care.*

37     (b) *Damages may be limited by a term in the warehouse*  
38 *receipt or storage agreement limiting the amount of liability in*  
39 *case of loss or damage beyond which the warehouse is not liable.*  
40 *Such a limitation is not effective with respect to the warehouse’s*

1 *liability for conversion to its own use. On request of the bailor in*  
2 *a record at the time of signing the storage agreement or within a*  
3 *reasonable time after receipt of the warehouse receipt, the*  
4 *warehouse's liability may be increased on part or all of the*  
5 *goods covered by the storage agreement or the warehouse*  
6 *receipt. In this event, increased rates may be charged based on*  
7 *an increased valuation of the goods.*

8 *(c) Reasonable provisions as to the time and manner of*  
9 *presenting claims and commencing actions based on the*  
10 *bailment may be included in the warehouse receipt or storage*  
11 *agreement.*

12 *(d) This section does not modify or repeal Section 1630 of the*  
13 *Civil Code nor any of the provisions of the Public Utilities Code*  
14 *or the Food and Agricultural Code or any lawful regulations*  
15 *issued thereunder.*

16 *7205. A buyer in ordinary course of business of fungible*  
17 *goods sold and delivered by a warehouse that is also in the*  
18 *business of buying and selling such goods takes the goods free of*  
19 *any claim under a warehouse receipt even if the receipt is*  
20 *negotiable and has been duly negotiated.*

21 *7206. (a) A warehouse, by giving notice to the person on*  
22 *whose account the goods are held and any other person known to*  
23 *claim an interest in the goods, may require payment of any*  
24 *charges and removal of the goods from the warehouse at the*  
25 *termination of the period of storage fixed by the document of title*  
26 *or, if a period is not fixed, within a stated period not less than 30*  
27 *days after the warehouse gives notice. If the goods are not*  
28 *removed before the date specified in the notice, the warehouse*  
29 *may sell them pursuant to Section 7210.*

30 *(b) If a warehouse in good faith believes that goods are about*  
31 *to deteriorate or decline in value to less than the amount of its*  
32 *lien within the time provided in subdivision (a) and Section 7210,*  
33 *the warehouse may specify in the notice given under subdivision*  
34 *(a) any reasonable shorter time for removal of the goods and, if*  
35 *the goods are not removed, may sell them at public sale held not*  
36 *less than one week after a single advertisement or posting.*

37 *(c) If, as a result of a quality or condition of the goods of*  
38 *which the warehouse did not have notice at the time of deposit,*  
39 *the goods are a hazard to other property, the warehouse*  
40 *facilities, or other persons, the warehouse may sell the goods at*

1 *public or private sale without advertisement or posting on*  
2 *reasonable notification to all persons known to claim an interest*  
3 *in the goods. If the warehouse, after a reasonable effort, is*  
4 *unable to sell the goods, it may dispose of them in any lawful*  
5 *manner and does not incur liability by reason of that disposition.*

6 *(d) A warehouse shall deliver the goods to any person entitled*  
7 *to them under this division upon due demand made at any time*  
8 *before sale or other disposition under this section.*

9 *(e) A warehouse may satisfy its lien from the proceeds of any*  
10 *sale or disposition under this section but shall hold the balance*  
11 *for delivery on the demand of any person to which the warehouse*  
12 *would have been bound to deliver the goods.*

13 *7207. (a) Unless the warehouse receipt provides otherwise,*  
14 *a warehouse shall keep separate the goods covered by each*  
15 *receipt so as to permit at all times identification and delivery of*  
16 *those goods. However, different lots of fungible goods may be*  
17 *commingled.*

18 *(b) If different lots of fungible goods are commingled, the*  
19 *goods are owned in common by the persons entitled thereto and*  
20 *the warehouse is severally liable to each owner for that owner's*  
21 *share. If, because of overissue, a mass of fungible goods is*  
22 *insufficient to meet all the receipts the warehouse has issued*  
23 *against it, the persons entitled include all holders to which*  
24 *overissued receipts have been duly negotiated.*

25 *7208. If a blank in a negotiable tangible warehouse receipt*  
26 *has been filled in without authority, a good-faith purchaser for*  
27 *value and without notice of the lack of authority may treat the*  
28 *insertion as authorized. Any other unauthorized alteration leaves*  
29 *any tangible or electronic warehouse receipt enforceable against*  
30 *the issuer according to its original tenor.*

31 *7209. (a) A warehouse has a lien against the bailor on the*  
32 *goods covered by a warehouse receipt or storage agreement or*  
33 *on the proceeds thereof in its possession for charges for storage*  
34 *or transportation, including demurrage and terminal charges,*  
35 *insurance, labor, or other charges, present or future, in relation*  
36 *to the goods, and for expenses necessary for preservation of the*  
37 *goods or reasonably incurred in their sale pursuant to law. If the*  
38 *person on whose account the goods are held is liable for similar*  
39 *charges or expenses in relation to other goods whenever*  
40 *deposited and it is stated in the warehouse receipt or storage*

1 agreement that a lien is claimed for charges and expenses in  
2 relation to other goods, the warehouse also has a lien against the  
3 goods covered by the warehouse receipt or storage agreement or  
4 on the proceeds thereof in its possession for those charges and  
5 expenses, whether or not the other goods have been delivered by  
6 the warehouse. However, as against a person to which a  
7 negotiable warehouse receipt is duly negotiated, a warehouse's  
8 lien is limited to charges in an amount or at a rate specified in  
9 the warehouse receipt or, if no charges are so specified, to a  
10 reasonable charge for storage of the specific goods covered by  
11 the receipt subsequent to the date of the receipt.

12 (b) A warehouse may also reserve a security interest against  
13 the bailor for the maximum amount specified on the receipt for  
14 charges other than those specified in subdivision (a), such as for  
15 money advanced and interest. The security interest is governed  
16 by Division 9 (commencing with Section 9101).

17 (c) A warehouse's lien for charges and expenses under  
18 subdivision (a) or a security interest under subdivision (b) is also  
19 effective against any person that so entrusted the bailor with  
20 possession of the goods that a pledge of them by the bailor to a  
21 good-faith purchaser for value would have been valid. However,  
22 the lien or security interest is not effective against a person that  
23 before issuance of a document of title had a legal interest or a  
24 perfected security interest in the goods and that did not:

25 (1) deliver or entrust the goods or any document of title  
26 covering the goods to the bailor or the bailor's nominee with:

27 (A) actual or apparent authority to ship, store, or sell;

28 (B) power to obtain delivery under Section 7403; or

29 (C) power of disposition under Section 2403 or 9320 or  
30 subdivision (c) of Section 9321 or subdivision (b) of Section  
31 10304 or subdivision (b) of Section 10305 or other statute or rule  
32 of law; or

33 (2) acquiesce in the procurement by the bailor or its nominee  
34 of any document.

35 (d) A warehouse's lien on household goods for charges and  
36 expenses in relation to the goods under subdivision (a) is also  
37 effective against all persons if the depositor was the legal  
38 possessor of the goods at the time of deposit. In this subdivision,  
39 "household goods" means furniture, furnishings, or personal  
40 effects used by the depositor in a dwelling.



1     (e) A warehouse loses its lien on any goods that it voluntarily  
2     delivers or unjustifiably refuses to deliver.

3     7210. (a) Except as otherwise provided in subdivision (b), a  
4     warehouse's lien may be enforced by public or private sale of the  
5     goods, in bulk or in packages, at any time or place and on any  
6     terms that are commercially reasonable, after notifying all  
7     persons known to claim an interest in the goods. The notification  
8     must include a statement of the amount due, the nature of the  
9     proposed sale, and the time and place of any public sale. The fact  
10    that a better price could have been obtained by a sale at a  
11    different time or in a method different from that selected by the  
12    warehouse is not of itself sufficient to establish that the sale was  
13    not made in a commercially reasonable manner. The warehouse  
14    sells in a commercially reasonable manner if the warehouse sells  
15    the goods in the usual manner in any recognized market  
16    therefore, sells at the price current in that market at the time of  
17    the sale, or otherwise sells in conformity with commercially  
18    reasonable practices among dealers in the type of goods sold. A  
19    sale of more goods than apparently necessary to be offered to  
20    ensure satisfaction of the obligation is not commercially  
21    reasonable, except in cases covered by the preceding sentence.

22    (b) A warehouse may enforce its lien on goods, other than  
23    goods stored by a merchant in the course of its business, only if  
24    the following requirements are satisfied:

25    (1) All persons known to claim an interest in the goods must  
26    be notified.

27    (2) The notification must include an itemized statement of the  
28    claim, a description of the goods subject to the lien, a demand for  
29    payment within a specified time not less than 10 days after  
30    receipt of the notification, and a conspicuous statement that  
31    unless the claim is paid within that time the goods will be  
32    advertised for sale and sold by auction at a specified time and  
33    place.

34    (3) The sale must conform to the terms of the notification.

35    (4) The sale must be held at the nearest suitable place to  
36    where the goods are held or stored.

37    (5) After the expiration of the time given in the notification, an  
38    advertisement of the sale must be published once a week for two  
39    weeks consecutively in a newspaper of general circulation where  
40    the sale is to be held. The advertisement must include a

1 *description of the goods, the name of the person on whose*  
2 *account the goods are being held, and the time and place of the*  
3 *sale. The sale must take place at least 15 days after the first*  
4 *publication. If there is no newspaper of general circulation*  
5 *where the sale is to be held, the advertisement must be posted at*  
6 *least 10 days before the sale in not fewer than six conspicuous*  
7 *places in the neighborhood of the proposed sale.*

8 *(c) Before any sale pursuant to this section, any person*  
9 *claiming a right in the goods may pay the amount necessary to*  
10 *satisfy the lien and the reasonable expenses incurred in*  
11 *complying with this section. In that event, the goods may not be*  
12 *sold but must be retained by the warehouse subject to the terms*  
13 *of the receipt and this division.*

14 *(d) A warehouse may buy at any public sale held pursuant to*  
15 *this section.*

16 *(e) A purchaser in good faith of goods sold to enforce a*  
17 *warehouse's lien takes the goods free of any rights of persons*  
18 *against which the lien was valid, despite the warehouse's*  
19 *noncompliance with this section.*

20 *(f) A warehouse may satisfy its lien from the proceeds of any*  
21 *sale pursuant to this section but shall hold the balance, if any, for*  
22 *delivery on demand to any person to which the warehouse would*  
23 *have been bound to deliver the goods.*

24 *(g) The rights provided by this section are in addition to all*  
25 *other rights allowed by law to a creditor against a debtor.*

26 *(h) If a lien is on goods stored by a merchant in the course of*  
27 *its business, the lien may be enforced in accordance with*  
28 *subdivision (a) or (b).*

29 *(i) A warehouse is liable for damages caused by failure to*  
30 *comply with the requirements for sale under this section and, in*  
31 *case of willful violation, is liable for conversion.*

32  
33 *CHAPTER 3. BILLS OF LADING: SPECIAL PROVISIONS*  
34

35 *7301. (a) A consignee of a nonnegotiable bill of lading which*  
36 *has given value in good faith, or a holder to which a negotiable*  
37 *bill has been duly negotiated, relying upon the description of the*  
38 *goods in the bill or upon the date shown in the bill, may recover*  
39 *from the issuer damages caused by the misdating of the bill or*  
40 *the nonreceipt or misdescription of the goods, except to the*

1 extent that the bill indicates that the issuer does not know  
2 whether any part or all of the goods in fact were received or  
3 conform to the description, such as in a case in which the  
4 description is in terms of marks or labels or kind, quantity, or  
5 condition or the receipt or description is qualified by “contents  
6 or condition of contents of packages unknown,” “said to  
7 contain,” “shipper’s weight, load, and count,” or words of  
8 similar import, if that indication is true.

9 (b) If goods are loaded by the issuer of a bill of lading:

10 (1) the issuer shall count the packages of goods if shipped in  
11 packages and ascertain the kind and quantity if shipped in bulk;  
12 and

13 (2) words such as “shipper’s weight, load, and count,” or  
14 words of similar import indicating that the description was made  
15 by the shipper are ineffective except as to goods concealed in  
16 packages.

17 (c) If bulk goods are loaded by a shipper that makes available  
18 to the issuer of a bill of lading adequate facilities for weighing  
19 those goods, the issuer shall ascertain the kind and quantity  
20 within a reasonable time after receiving the shipper’s request in  
21 a record to do so. In that case, “shipper’s weight” or words of  
22 similar import are ineffective.

23 (d) The issuer of a bill of lading, by including in the bill the  
24 words “shipper’s weight, load, and count,” or words of similar  
25 import, may indicate that the goods were loaded by the shipper;  
26 and, if that statement is true, the issuer is not liable for damages  
27 caused by the improper loading. However, omission of such  
28 words does not imply liability for damages caused by improper  
29 loading.

30 (e) A shipper guarantees to an issuer the accuracy at the time  
31 of shipment of the description, marks, labels, number, kind,  
32 quantity, condition, and weight, as furnished by the shipper, and  
33 the shipper shall indemnify the issuer against damage caused by  
34 inaccuracies in those particulars. This right of indemnity does  
35 not limit the issuer’s responsibility or liability under the contract  
36 of carriage to any person other than the shipper.

37 7302. (a) The issuer of a through bill of lading, or other  
38 document of title embodying an undertaking to be performed in  
39 part by a person acting as its agent or by a performing carrier, is  
40 liable to any person entitled to recover on the bill or other

1 document for any breach by the other person or the performing  
2 carrier of its obligation under the bill or other document.  
3 However, to the extent that the bill or other document covers an  
4 undertaking to be performed overseas or in territory not  
5 contiguous to the continental United States or an undertaking  
6 including matters other than transportation, this liability for  
7 breach by the other person or the performing carrier may be  
8 varied by agreement of the parties.

9 (b) If goods covered by a through bill of lading or other  
10 document of title embodying an undertaking to be performed in  
11 part by a person other than the issuer are received by that  
12 person, the person is subject, with respect to its own performance  
13 while the goods are in its possession, to the obligation of the  
14 issuer. The person's obligation is discharged by delivery of the  
15 goods to another person pursuant to the bill or other document  
16 and does not include liability for breach by any other person or  
17 by the issuer.

18 (c) The issuer of a through bill of lading or other document of  
19 title described in subdivision (a) is entitled to recover from the  
20 performing carrier, or other person in possession of the goods  
21 when the breach of the obligation under the bill or other  
22 document occurred:

23 (1) the amount it may be required to pay to any person entitled  
24 to recover on the bill or other document for the breach, as may  
25 be evidenced by any receipt, judgment, or transcript of judgment;  
26 and

27 (2) the amount of any expense reasonably incurred by the  
28 issuer in defending any action commenced by any person entitled  
29 to recover on the bill or other document for the breach.

30 7303. (a) Unless the bill of lading otherwise provides, a  
31 carrier may deliver the goods to a person or destination other  
32 than that stated in the bill or may otherwise dispose of the goods,  
33 without liability for misdelivery, on instructions from:

34 (1) the holder of a negotiable bill;

35 (2) the consignor on a nonnegotiable bill, even if the  
36 consignee has given contrary instructions;

37 (3) the consignee on a nonnegotiable bill in the absence of  
38 contrary instructions from the consignor, if the goods have  
39 arrived at the billed destination or if the consignee is in

1 *possession of the tangible bill or in control of the electronic bill;*  
2 *or*

3 *(4) the consignee on a nonnegotiable bill, if the consignee is*  
4 *entitled as against the consignor to dispose of the goods.*

5 *(b) Unless instructions described in subdivision (a) are*  
6 *included in a negotiable bill of lading, a person to which the bill*  
7 *is duly negotiated may hold the bailee according to the original*  
8 *terms.*

9 7304. *(a) Except as customary in international*  
10 *transportation, a tangible bill of lading may not be issued in a set*  
11 *of parts. The issuer is liable for damages caused by violation of*  
12 *this subdivision.*

13 *(b) If a tangible bill of lading is lawfully issued in a set of*  
14 *parts, each of which contains an identification code and is*  
15 *expressed to be valid only if the goods have not been delivered*  
16 *against any other part, the whole of the parts constitutes one bill.*

17 *(c) If a tangible negotiable bill of lading is lawfully issued in a*  
18 *set of parts and different parts are negotiated to different*  
19 *persons, the title of the holder to which the first due negotiation*  
20 *is made prevails as to both the document of title and the goods*  
21 *even if any later holder may have received the goods from the*  
22 *carrier in good faith and discharged the carrier's obligation by*  
23 *surrendering its part.*

24 *(d) A person that negotiates or transfers a single part of a*  
25 *tangible bill of lading issued in a set is liable to holders of that*  
26 *part as if it were the whole set.*

27 *(e) The bailee shall deliver in accordance with Chapter 4*  
28 *(commencing with Section 7401) against the first presented part*  
29 *of a tangible bill of lading lawfully issued in a set. Delivery in*  
30 *this manner discharges the bailee's obligation on the whole bill.*

31 7305. *(a) Instead of issuing a bill of lading to the consignor*  
32 *at the place of shipment, a carrier, at the request of the*  
33 *consignor, may procure the bill to be issued at destination or at*  
34 *any other place designated in the request.*

35 *(b) Upon request of any person entitled as against a carrier to*  
36 *control the goods while in transit and on surrender of possession*  
37 *or control of any outstanding bill of lading or other receipt*  
38 *covering the goods, the issuer, subject to Section 7105, may*  
39 *procure a substitute bill to be issued at any place designated in*  
40 *the request.*

1     7306. *An unauthorized alteration or filling in of a blank in a*  
2 *bill of lading leaves the bill enforceable according to its original*  
3 *tenor.*

4     7307. (a) *A carrier has a lien on the goods covered by a bill*  
5 *of lading or on the proceeds thereof in its possession for charges*  
6 *after the date of the carrier's receipt of the goods for storage or*  
7 *transportation, including demurrage and terminal charges, and*  
8 *for expenses necessary for preservation of the goods incident to*  
9 *their transportation or reasonably incurred in their sale pursuant*  
10 *to law. However, against a purchaser for value of a negotiable*  
11 *bill of lading, a carrier's lien is limited to charges stated in the*  
12 *bill or the applicable tariffs or, if no charges are stated, a*  
13 *reasonable charge.*

14     (b) *A lien for charges and expenses under subdivision (a) on*  
15 *goods that the carrier was required by law to receive for*  
16 *transportation is effective against the consignor or any person*  
17 *entitled to the goods unless the carrier had notice that the*  
18 *consignor lacked authority to subject the goods to those charges*  
19 *and expenses. Any other lien under subdivision (a) is effective*  
20 *against the consignor and any person that permitted the bailor to*  
21 *have control or possession of the goods unless the carrier had*  
22 *notice that the bailor lacked authority.*

23     (c) *A carrier loses its lien on any goods that it voluntarily*  
24 *delivers or unjustifiably refuses to deliver.*

25     7308. (a) *A carrier's lien on goods may be enforced by*  
26 *public or private sale of the goods, in bulk or in packages, at any*  
27 *time or place and on any terms that are commercially*  
28 *reasonable, after notifying all persons known to claim an interest*  
29 *in the goods. The notification must include a statement of the*  
30 *amount due, the nature of the proposed sale, and the time and*  
31 *place of any public sale. The fact that a better price could have*  
32 *been obtained by a sale at a different time or in a method*  
33 *different from that selected by the carrier is not of itself sufficient*  
34 *to establish that the sale was not made in a commercially*  
35 *reasonable manner. The carrier sells goods in a commercially*  
36 *reasonable manner if the carrier sells the goods in the usual*  
37 *manner in any recognized market therefor, sells at the price*  
38 *current in that market at the time of the sale, or otherwise sells in*  
39 *conformity with commercially reasonable practices among*  
40 *dealers in the type of goods sold. A sale of more goods than*

1 *apparently necessary to be offered to ensure satisfaction of the*  
2 *obligation is not commercially reasonable, except in cases*  
3 *covered by the preceding sentence.*

4 *(b) Before any sale pursuant to this section, any person*  
5 *claiming a right in the goods may pay the amount necessary to*  
6 *satisfy the lien and the reasonable expenses incurred in*  
7 *complying with this section. In that event, the goods may not be*  
8 *sold but must be retained by the carrier, subject to the terms of*  
9 *the bill of lading and this division.*

10 *(c) A carrier may buy at any public sale pursuant to this*  
11 *section.*

12 *(d) A purchaser in good faith of goods sold to enforce a*  
13 *carrier's lien takes the goods free of any rights of persons*  
14 *against which the lien was valid, despite the carrier's*  
15 *noncompliance with this section.*

16 *(e) A carrier may satisfy its lien from the proceeds of any sale*  
17 *pursuant to this section but shall hold the balance, if any, for*  
18 *delivery on demand to any person to which the carrier would*  
19 *have been bound to deliver the goods.*

20 *(f) The rights provided by this section are in addition to all*  
21 *other rights allowed by law to a creditor against a debtor.*

22 *(g) A carrier's lien may be enforced pursuant to either*  
23 *subdivision (a) or the procedure set forth in subdivision (b) of*  
24 *Section 7210.*

25 *(h) A carrier is liable for damages caused by failure to comply*  
26 *with the requirements for sale under this section and, in case of*  
27 *willful violation, is liable for conversion.*

28 *7309. (a) A carrier that issues a bill of lading, whether*  
29 *negotiable or nonnegotiable, shall exercise the degree of care in*  
30 *relation to the goods which a reasonably careful person would*  
31 *exercise under similar circumstances. This subdivision does not*  
32 *affect any statute, regulation, or rule of law that imposes liability*  
33 *upon a common carrier for damages not caused by its*  
34 *negligence.*

35 *(b) Damages may be limited by a term in the bill of lading or*  
36 *in a transportation agreement that the carrier's liability may not*  
37 *exceed a value stated in the bill or transportation agreement if*  
38 *the carrier's rates are dependent upon value and the consignor is*  
39 *afforded an opportunity to declare a higher value and the*  
40 *consignor is advised of the opportunity. However, such a*

1 *limitation is not effective with respect to the carrier's liability for*  
2 *conversion to its own use.*

3 *(c) Reasonable provisions as to the time and manner of*  
4 *presenting claims and commencing actions based on the*  
5 *shipment may be included in a bill of lading or a transportation*  
6 *agreement.*

7  
8 *CHAPTER 4. WAREHOUSE RECEIPTS AND BILLS OF LADING:*  
9 *GENERAL OBLIGATIONS*

10  
11 *7401. The obligations imposed by this division on an issuer*  
12 *apply to a document of title even if:*

13 *(1) the document does not comply with the requirements of this*  
14 *division or of any other statute, rule, or regulation regarding its*  
15 *issuance, form, or content;*

16 *(2) the issuer violated laws regulating the conduct of its*  
17 *business;*

18 *(3) the goods covered by the document were owned by the*  
19 *bailee when the document was issued; or*

20 *(4) the person issuing the document is not a warehouse but the*  
21 *document purports to be a warehouse receipt.*

22 *7402. A duplicate or any other document of title purporting to*  
23 *cover goods already represented by an outstanding document of*  
24 *the same issuer does not confer any right in the goods, except as*  
25 *provided in the case of tangible bills of lading in a set of parts,*  
26 *overissue of documents for fungible goods, substitutes for lost,*  
27 *stolen, or destroyed documents, or substitute documents issued*  
28 *pursuant to Section 7105. The issuer is liable for damages*  
29 *caused by its overissue or failure to identify a duplicate*  
30 *document by a conspicuous notation.*

31 *7403. (a) A bailee shall deliver the goods to a person entitled*  
32 *under a document of title if the person complies with subdivisions*  
33 *(b) and (c), unless and to the extent that the bailee establishes*  
34 *any of the following:*

35 *(1) delivery of the goods to a person whose receipt was*  
36 *rightful as against the claimant;*

37 *(2) damage to or delay, loss, or destruction of the goods for*  
38 *which the bailee is not liable;*



1 (3) previous sale or other disposition of the goods in lawful  
2 enforcement of a lien or on a warehouse's lawful termination of  
3 storage;

4 (4) the exercise by a seller of its right to stop delivery pursuant  
5 to Section 2705 or by a lessor of its right to stop delivery  
6 pursuant to Section 10526;

7 (5) a diversion, reconsignment, or other disposition pursuant  
8 to Section 7303;

9 (6) release, satisfaction, or any other personal defense against  
10 the claimant; or

11 (7) any other lawful excuse.

12 (b) A person claiming goods covered by a document of title  
13 shall satisfy the bailee's lien if the bailee so requests or if the  
14 bailee is prohibited by law from delivering the goods until the  
15 charges are paid.

16 (c) Unless a person claiming the goods is a person against  
17 which the document of title does not confer a right under  
18 subdivision (a) of Section 7503:

19 (1) the person claiming under a document shall surrender  
20 possession or control of any outstanding negotiable document  
21 covering the goods for cancellation or indication of partial  
22 deliveries; and

23 (2) the bailee shall cancel the document or conspicuously  
24 indicate in the document the partial delivery or the bailee is  
25 liable to any person to which the document is duly negotiated.

26 7404. A bailee that in good faith has received goods and  
27 delivered or otherwise disposed of the goods according to the  
28 terms of a document of title or pursuant to this division is not  
29 liable for the goods even if:

30 (1) the person from which the bailee received the goods did  
31 not have authority to procure the document or to dispose of the  
32 goods; or

33 (2) the person to which the bailee delivered the goods did not  
34 have authority to receive the goods.

35  
36 CHAPTER 5. WAREHOUSE RECEIPTS AND BILLS OF LADING:  
37 NEGOTIATION AND TRANSFER  
38

39 7501. (a) The following rules apply to a negotiable tangible  
40 document of title:

1     (1) If the document's original terms run to the order of a  
2     named person, the document is negotiated by the named person's  
3     indorsement and delivery. After the named person's indorsement  
4     in blank or to bearer, any person may negotiate the document by  
5     delivery alone.

6     (2) If the document's original terms run to bearer, it is  
7     negotiated by delivery alone.

8     (3) If the document's original terms run to the order of a  
9     named person and it is delivered to the named person, the effect  
10    is the same as if the document had been negotiated.

11    (4) Negotiation of the document after it has been indorsed to a  
12    named person requires indorsement by the named person and  
13    delivery.

14    (5) A document is duly negotiated if it is negotiated in the  
15    manner stated in this subdivision to a holder that purchases it in  
16    good faith, without notice of any defense against or claim to it on  
17    the part of any person, and for value, unless it is established that  
18    the negotiation is not in the regular course of business or  
19    financing or involves receiving the document in settlement or  
20    payment of a monetary obligation.

21    (b) The following rules apply to a negotiable electronic  
22    document of title:

23    (1) If the document's original terms run to the order of a  
24    named person or to bearer, the document is negotiated by  
25    delivery of the document to another person. Indorsement by the  
26    named person is not required to negotiate the document.

27    (2) If the document's original terms run to the order of a  
28    named person and the named person has control of the  
29    document, the effect is the same as if the document had been  
30    negotiated.

31    (3) A document is duly negotiated if it is negotiated in the  
32    manner stated in this subdivision to a holder that purchases it in  
33    good faith, without notice of any defense against or claim to it on  
34    the part of any person, and for value, unless it is established that  
35    the negotiation is not in the regular course of business or  
36    financing or involves taking delivery of the document in  
37    settlement or payment of a monetary obligation.

38    (c) Indorsement of a nonnegotiable document of title neither  
39    makes it negotiable nor adds to the transferee's rights.

1     (d) *The naming in a negotiable bill of lading of a person to be*  
2 *notified of the arrival of the goods does not limit the negotiability*  
3 *of the bill or constitute notice to a purchaser of the bill of any*  
4 *interest of that person in the goods.*

5     7502. (a) *Subject to Sections 7205 and 7503, a holder to*  
6 *which a negotiable document of title has been duly negotiated*  
7 *acquires thereby:*

8         (1) *title to the document;*

9         (2) *title to the goods;*

10        (3) *all rights accruing under the law of agency or estoppel,*  
11 *including rights to goods delivered to the bailee after the*  
12 *document was issued; and*

13        (4) *the direct obligation of the issuer to hold or deliver the*  
14 *goods according to the terms of the document free of any defense*  
15 *or claim by the issuer except those arising under the terms of the*  
16 *document or under this division, but in the case of a delivery*  
17 *order, the bailee's obligation accrues only upon the bailee's*  
18 *acceptance of the delivery order and the obligation acquired by*  
19 *the holder is that the issuer and any indorser will procure the*  
20 *acceptance of the bailee.*

21     (b) *Subject to Section 7503, title and rights acquired by due*  
22 *negotiation are not defeated by any stoppage of the goods*  
23 *represented by the document of title or by surrender of the goods*  
24 *by the bailee and are not impaired even if:*

25         (1) *the due negotiation or any prior due negotiation*  
26 *constituted a breach of duty;*

27         (2) *any person has been deprived of possession of a negotiable*  
28 *tangible document or control of a negotiable electronic*  
29 *document by misrepresentation, fraud, accident, mistake, duress,*  
30 *loss, theft, or conversion; or*

31         (3) *a previous sale or other transfer of the goods or document*  
32 *has been made to a third person.*

33     7503. (a) *A document of title confers no right in goods*  
34 *against a person that before issuance of the document had a*  
35 *legal interest or a perfected security interest in the goods and*  
36 *that did not:*

37         (1) *deliver or entrust the goods or any document of title*  
38 *covering the goods to the bailor or the bailor's nominee with:*

39             (A) *actual or apparent authority to ship, store, or sell;*

40             (B) *power to obtain delivery under Section 7403; or*

1 (C) power of disposition under Section 2403 or 9320 or  
2 subdivision (c) of Section 9321 or subdivision (b) of Section  
3 10304 or subdivision (b) of Section 10305 or other statute or rule  
4 of law; or

5 (2) acquiesce in the procurement by the bailor or its nominee  
6 of any document.

7 (b) Title to goods based upon an unaccepted delivery order is  
8 subject to the rights of any person to which a negotiable  
9 warehouse receipt or bill of lading covering the goods has been  
10 duly negotiated. That title may be defeated under Section 7504 to  
11 the same extent as the rights of the issuer or a transferee from the  
12 issuer.

13 (c) Title to goods based upon a bill of lading issued to a  
14 freight forwarder is subject to the rights of any person to which a  
15 bill issued by the freight forwarder is duly negotiated. However,  
16 delivery by the carrier in accordance with Chapter 4  
17 (commencing with Section 7401) pursuant to its own bill of  
18 lading discharges the carrier's obligation to deliver.

19 7504. (a) A transferee of a document of title, whether  
20 negotiable or nonnegotiable, to which the document has been  
21 delivered but not duly negotiated, acquires the title and rights  
22 that its transferor had or had actual authority to convey.

23 (b) In the case of a transfer of a nonnegotiable document of  
24 title, until but not after the bailee receives notice of the transfer,  
25 the rights of the transferee may be defeated:

26 (1) by those creditors of the transferor which could treat the  
27 transfer as void under Section 2402 or 10308;

28 (2) by a buyer from the transferor in ordinary course of  
29 business if the bailee has delivered the goods to the buyer or  
30 received notification of the buyer's rights;

31 (3) by a lessee from the transferor in ordinary course of  
32 business if the bailee has delivered the goods to the lessee or  
33 received notification of the lessee's rights; or

34 (4) as against the bailee, by good-faith dealings of the bailee  
35 with the transferor.

36 (c) A diversion or other change of shipping instructions by the  
37 consignor in a nonnegotiable bill of lading which causes the  
38 bailee not to deliver the goods to the consignee defeats the  
39 consignee's title to the goods if the goods have been delivered to  
40 a buyer in ordinary course of business or a lessee in ordinary

1 *course of business and, in any event, defeats the consignee's*  
2 *rights against the bailee.*

3 *(d) Delivery of the goods pursuant to a nonnegotiable*  
4 *document of title may be stopped by a seller under Section 2705*  
5 *or a lessor under Section 10526, subject to the requirements of*  
6 *due notification in those sections. A bailee that honors the*  
7 *seller's or lessor's instructions is entitled to be indemnified by*  
8 *the seller or lessor against any resulting loss or expense.*

9 *7505. The indorsement of a tangible document of title issued*  
10 *by a bailee does not make the indorser liable for any default by*  
11 *the bailee or previous endorsers.*

12 *7506. The transferee of a negotiable tangible document of*  
13 *title has a specifically enforceable right to have its transferor*  
14 *supply any necessary indorsement, but the transfer becomes a*  
15 *negotiation only as of the time the indorsement is supplied.*

16 *7507. If a person negotiates or delivers a document of title*  
17 *for value, otherwise than as a mere intermediary under Section*  
18 *7508, unless otherwise agreed, the transferor, in addition to any*  
19 *warranty made in selling or leasing the goods, warrants to its*  
20 *immediate purchaser only that:*

21 *(1) the document is genuine;*

22 *(2) the transferor does not have knowledge of any fact that*  
23 *would impair the document's validity or worth; and*

24 *(3) the negotiation or delivery is rightful and fully effective*  
25 *with respect to the title to the document and the goods it*  
26 *represents.*

27 *7508. A collecting bank or other intermediary known to be*  
28 *entrusted with documents of title on behalf of another or with*  
29 *collection of a draft or other claim against delivery of documents*  
30 *warrants by the delivery of the documents only its own good faith*  
31 *and authority even if the collecting bank or other intermediary*  
32 *has purchased or made advances against the claim or draft to be*  
33 *collected.*

34 *7509. Whether a document of title is adequate to fulfill the*  
35 *obligations of a contract for sale, a contract for lease, or the*  
36 *conditions of a letter of credit is determined by Division 2*  
37 *(commencing with Section 2101), Division 5 (commencing with*  
38 *Section 5101), or Division 10 (commencing with Section 10101).*

1        *CHAPTER 6. WAREHOUSE RECEIPTS AND BILLS OF LADING:*  
2                    *MISCELLANEOUS PROVISIONS*

3  
4        7601. (a) *If a document of title is lost, stolen, or destroyed, a*  
5 *court may order delivery of the goods or issuance of a substitute*  
6 *document and the bailee may without liability to any person*  
7 *comply with the order. If the document was negotiable, a court*  
8 *may not order delivery of the goods or issuance of a substitute*  
9 *document without the claimant's posting security unless it finds*  
10 *that any person that may suffer loss as a result of nonsurrender*  
11 *of possession or control of the document is adequately protected*  
12 *against the loss. If the document was nonnegotiable, the court*  
13 *may require security. The court may also order payment of the*  
14 *bailee's reasonable costs and attorney's fees in any action under*  
15 *this subdivision.*

16        (b) *A bailee that, without a court order, delivers goods to a*  
17 *person claiming under a missing negotiable document of title is*  
18 *liable to any person injured thereby. If the delivery is not in good*  
19 *faith, the bailee is liable for conversion. Delivery in good faith is*  
20 *not conversion if the claimant posts security with the bailee in an*  
21 *amount at least double the value of the goods at the time of*  
22 *posting to indemnify any person injured by the delivery which*  
23 *files a notice of claim within one year after the delivery.*

24        7602. *Unless a document of title was originally issued upon*  
25 *delivery of the goods by a person that did not have power to*  
26 *dispose of them, a lien does not attach by virtue of any judicial*  
27 *process to goods in the possession of a bailee for which a*  
28 *negotiable document of title is outstanding unless possession or*  
29 *control of the document is first surrendered to the bailee or the*  
30 *document's negotiation is enjoined. The bailee may not be*  
31 *compelled to deliver the goods pursuant to process until*  
32 *possession or control of the document is surrendered to the*  
33 *bailee or to the court. A purchaser of the document for value*  
34 *without notice of the process or injunction takes free of the lien*  
35 *imposed by judicial process.*

36        7603. *If more than one person claims title to or possession of*  
37 *the goods, the bailee is excused from delivery until the bailee has*  
38 *a reasonable time to ascertain the validity of the adverse claims*  
39 *or to commence an action for interpleader. The bailee may assert*

1 *an interpleader either in defending an action for nondelivery of*  
2 *the goods or by original action.*

3 *SEC. 45. Section 8102 of the Commercial Code is amended to*  
4 *read:*

5 8102. (a) In this division:

6 (1) “Adverse claim” means a claim that a claimant has a  
7 property interest in a financial asset and that it is a violation of  
8 the rights of the claimant for another person to hold, transfer, or  
9 deal with the financial asset.

10 (2) “Bearer form,” as applied to a certificated security, means  
11 a form in which the security is payable to the bearer of the  
12 security certificate according to its terms but not by reason of an  
13 indorsement.

14 (3) “Broker” means a person defined as a broker or dealer  
15 under the federal securities laws, but without excluding a bank  
16 acting in that capacity.

17 (4) “Certificated security” means a security that is represented  
18 by a certificate.

19 (5) “Clearing corporation” means any of the following:

20 (A) A person that is registered as a “clearing agency” under  
21 the federal securities laws.

22 (B) A federal reserve bank.

23 (C) Any other person that provides clearance or settlement  
24 services with respect to financial assets that would require it to  
25 register as a clearing agency under the federal securities laws but  
26 for an exclusion or exemption from the registration requirement,  
27 if its activities as a clearing corporation, including promulgation  
28 of rules, are subject to regulation by a federal or state  
29 governmental authority.

30 (6) “Communicate” means to either:

31 (A) Send a signed writing.

32 (B) Transmit information by any mechanism agreed upon by  
33 the persons transmitting and receiving the information.

34 (7) “Entitlement holder” means a person identified in the  
35 records of a securities intermediary as the person having a  
36 security entitlement against the securities intermediary. If a  
37 person acquires a security entitlement by virtue of paragraph (2)  
38 or (3) of subdivision (b) of Section 8501, that person is the  
39 entitlement holder.

(8) “Entitlement order” means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) “Financial asset,” except as otherwise provided in Section 8103, means any of the following:

(A) A security.

(B) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, that is, or is of a type, dealt in or traded on financial markets, or that is recognized in any area in which it is issued or dealt in as a medium for investment.

(C) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this division. As context requires, the term means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

~~(10) “Good faith,” for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this division, means honesty in fact and the observance of reasonable commercial standards of fair dealing. [Reserved]~~

(11) “Endorsement” means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) “Instruction” means a notification communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed.

(13) “Registered form,” as applied to a certificated security, means a form in which both of the following apply:

(A) The security certificate specifies a person entitled to the security.

(B) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) “Securities intermediary” means either:



1 (A) A clearing corporation.

2 (B) A person, including a bank or broker, that in the ordinary  
3 course of its business maintains securities accounts for others and  
4 is acting in that capacity.

5 (15) “Security,” except as otherwise provided in Section 8103,  
6 means an obligation of an issuer or a share, participation, or other  
7 interest in an issuer or in property or an enterprise of an issuer  
8 that is all of the following:

9 (A) It is represented by a security certificate in bearer or  
10 registered form, or the transfer of it may be registered upon  
11 books maintained for that purpose by or on behalf of the issuer.

12 (B) It is one of a class or series or by its terms is divisible into  
13 a class or series of shares, participations, interests, or obligations.

14 (C) It is either of the following:

15 (i) It is, or is of a type, dealt in or traded on securities  
16 exchanges or securities markets.

17 (ii) It is a medium for investment and by its terms expressly  
18 provides that it is a security governed by this division.

19 (16) “Security certificate” means a certificate representing a  
20 security.

21 (17) “Security entitlement” means the rights and property  
22 interest of an entitlement holder with respect to a financial asset  
23 specified in Chapter 5 (commencing with Section 8501).

24 (18) “Uncertificated security” means a security that is not  
25 represented by a certificate.

26 (b) Other definitions applying to this division and the sections  
27 in which they appear are:

28 Appropriate person. Section 8107.

29 Control. Section 8106.

30 Delivery. Section 8301.

31 Investment company security. Section 8103.

32 Issuer. Section 8201.

33 Overissue. Section 8210.

34 Protected purchaser. Section 8303.

35 Securities account. Section 8501.

36 (c) In addition, Division 1 (commencing with Section 1101)  
37 contains general definitions and principles of construction and  
38 interpretation applicable throughout this division.

39 (d) The characterization of a person, business, or transaction  
40 for purposes of this division does not determine the

1 characterization of the person, business, or transaction for  
2 purposes of any other law, regulation, or rule.

3 *SEC. 46. Section 8103 of the Commercial Code is amended to*  
4 *read:*

5 8103. (a) A share or similar equity interest issued by a  
6 corporation, business trust, joint stock company, or similar entity  
7 is a security.

8 (b) An “investment company security” is a security.  
9 “Investment company security” means a share or similar equity  
10 interest issued by an entity that is registered as an investment  
11 company under the federal investment company laws, an interest  
12 in a unit investment trust that is so registered, or a face-amount  
13 certificate issued by a face-amount certificate company that is so  
14 registered. Investment company security does not include an  
15 insurance policy or endowment policy or annuity contract issued  
16 by an insurance company.

17 (c) An interest in a partnership or limited liability company is  
18 not a security unless it is dealt in or traded on securities  
19 exchanges or in securities markets, its terms expressly provide  
20 that it is a security governed by this division, or it is an  
21 investment company security. However, an interest in a  
22 partnership or limited liability company is a financial asset if it is  
23 held in a securities account.

24 (d) A writing that is a security certificate is governed by this  
25 division and not by Division 3 (commencing with Section 3101),  
26 even though it also meets the requirements of that division.  
27 However, a negotiable instrument governed by Division 3  
28 (commencing with Section 3101) is a financial asset if it is held  
29 in a securities account.

30 (e) An option or similar obligation issued by a clearing  
31 corporation to its participants is not a security, but is a financial  
32 asset.

33 (f) A commodity contract, as defined in paragraph (15) of  
34 subdivision (a) of Section 9102, is not a security or a financial  
35 asset.

36 (g) *A document of title is not a financial asset unless*  
37 *subparagraph (C) of paragraph (9) of subdivision (a) of Section*  
38 *8102 applies.*

39 *SEC. 47. Section 9102 of the Commercial Code is amended to*  
40 *read:*

1     9102. (a) In this division:

2     (1) “Accession” means goods that are physically united with  
3 other goods in such a manner that the identity of the original  
4 goods is not lost.

5     (2) “Account,” except as used in “account for,” means a right  
6 to payment of a monetary obligation, whether or not earned by  
7 performance, (i) for property that has been or is to be sold,  
8 leased, licensed, assigned, or otherwise disposed of, (ii) for  
9 services rendered or to be rendered, (iii) for a policy of insurance  
10 issued or to be issued, (iv) for a secondary obligation incurred or  
11 to be incurred, (v) for energy provided or to be provided, (vi) for  
12 the use or hire of a vessel under a charter or other contract, (vii)  
13 arising out of the use of a credit or charge card or information  
14 contained on or for use with the card, or (viii) as winnings in a  
15 lottery or other game of chance operated or sponsored by a state,  
16 governmental unit of a state, or person licensed or authorized to  
17 operate the game by a state or governmental unit of a state. The  
18 term includes health care insurance receivables. The term does  
19 not include (i) rights to payment evidenced by chattel paper or an  
20 instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv)  
21 investment property, (v) letter-of-credit rights or letters of credit,  
22 or (vi) rights to payment for money or funds advanced or sold,  
23 other than rights arising out of the use of a credit or charge card  
24 or information contained on or for use with the card.

25     (3) “Account debtor” means a person obligated on an account,  
26 chattel paper, or general intangible. The term does not include  
27 persons obligated to pay a negotiable instrument, even if the  
28 instrument constitutes part of chattel paper.

29     (4) “Accounting,” except as used in “accounting for,” means a  
30 record that is all of the following:

31     (A) Authenticated by a secured party.

32     (B) Indicating the aggregate unpaid secured obligations as of a  
33 date not more than 35 days earlier or 35 days later than the date  
34 of the record.

35     (C) Identifying the components of the obligations in  
36 reasonable detail.

37     (5) “Agricultural lien” means an interest in farm products that  
38 meets all of the following conditions:

39     (A) It secures payment or performance of an obligation for  
40 either of the following:

- 1 (i) Goods or services furnished in connection with a debtor's  
2 farming operation.
- 3 (ii) Rent on real property leased by a debtor in connection with  
4 its farming operation.
- 5 (B) It is created by statute in favor of a person that does either  
6 of the following:
- 7 (i) In the ordinary course of its business furnished goods or  
8 services to a debtor in connection with a debtor's farming  
9 operation.
- 10 (ii) Leased real property to a debtor in connection with the  
11 debtor's farming operation.
- 12 (C) Its effectiveness does not depend on the person's  
13 possession of the personal property.
- 14 (6) "As-extracted collateral" means either of the following:
- 15 (A) Oil, gas, or other minerals that are subject to a security  
16 interest that does both of the following:
- 17 (i) Is created by a debtor having an interest in the minerals  
18 before extraction.
- 19 (ii) Attaches to the minerals as extracted.
- 20 (B) Accounts arising out of the sale at the wellhead or  
21 minehead of oil, gas, or other minerals in which the debtor had  
22 an interest before extraction.
- 23 (7) "Authenticate" means to do either of the following:
- 24 (A) To sign.
- 25 (B) To execute or otherwise adopt a symbol, or encrypt or  
26 similarly process a record in whole or in part, with the present  
27 intent of the authenticating person to identify the person and  
28 adopt or accept a record.
- 29 (8) "Bank" means an organization that is engaged in the  
30 business of banking. The term includes savings banks, savings  
31 and loan associations, credit unions, and trust companies.
- 32 (9) "Cash proceeds" means proceeds that are money, checks,  
33 deposit accounts, or the like.
- 34 (10) "Certificate of title" means a certificate of title with  
35 respect to which a statute provides for the security interest in  
36 question to be indicated on the certificate as a condition or result  
37 of the security interest's obtaining priority over the rights of a  
38 lien creditor with respect to the collateral.
- 39 (11) "Chattel paper" means a record or records that evidence  
40 both a monetary obligation and a security interest in specific

1 goods, a security interest in specific goods and software used in  
2 the goods, a security interest in specific goods and license of  
3 software used in the goods, a lease of specific goods, or a lease of  
4 specific goods and license of software used in the goods. In this  
5 paragraph, “monetary obligation” means a monetary obligation  
6 secured by the goods or owed under a lease of the goods and  
7 includes a monetary obligation with respect to software used in  
8 the goods. The term does not include (i) charters or other  
9 contracts involving the use or hire of a vessel or (ii) records that  
10 evidence a right to payment arising out of the use of a credit or  
11 charge card or information contained on or for use with the card.  
12 If a transaction is evidenced by records that include an  
13 instrument or series of instruments, the group of records taken  
14 together constitutes chattel paper.

15 (12) “Collateral” means the property subject to a security  
16 interest or agricultural lien. The term includes all of the  
17 following:

18 (A) Proceeds to which a security interest attaches.

19 (B) Accounts, chattel paper, payment intangibles, and  
20 promissory notes that have been sold.

21 (C) Goods that are the subject of a consignment.

22 (13) “Commercial tort claim” means a claim arising in tort  
23 with respect to which either of the following conditions is  
24 satisfied:

25 (A) The claimant is an organization.

26 (B) The claimant is an individual and both of the following  
27 conditions are satisfied regarding the claim:

28 (i) It arose in the course of the claimant’s business or  
29 profession.

30 (ii) It does not include damages arising out of personal injury  
31 to or the death of an individual.

32 (14) “Commodity account” means an account maintained by a  
33 commodity intermediary in which a commodity contract is  
34 carried for a commodity customer.

35 (15) “Commodity contract” means a commodity futures  
36 contract, an option on a commodity futures contract, a  
37 commodity option, or another contract if the contract or option is  
38 either of the following:

1 (A) Traded on or subject to the rules of a board of trade that  
2 has been designated as a contract market for such a contract  
3 pursuant to federal commodities laws.

4 (B) Traded on a foreign commodity board of trade, exchange,  
5 or market, and is carried on the books of a commodity  
6 intermediary for a commodity customer.

7 (16) “Commodity customer” means a person for which a  
8 commodity intermediary carries a commodity contract on its  
9 books.

10 (17) “Commodity intermediary” means a person that is either  
11 of the following:

12 (A) Is registered as a futures commission merchant under  
13 federal commodities law.

14 (B) In the ordinary course of its business provides clearance or  
15 settlement services for a board of trade that has been designated  
16 as a contract market pursuant to federal commodities law.

17 (18) “Communicate” means to do any of the following:

18 (A) To send a written or other tangible record.

19 (B) To transmit a record by any means agreed upon by the  
20 persons sending and receiving the record.

21 (C) In the case of transmission of a record to or by a filing  
22 office, to transmit a record by any means prescribed by  
23 filing-office rule.

24 (19) “Consignee” means a merchant to which goods are  
25 delivered in a consignment.

26 (20) “Consignment” means a transaction, regardless of its  
27 form, in which a person delivers goods to a merchant for the  
28 purpose of sale and all of the following conditions are satisfied:

29 (A) The merchant satisfies all of the following conditions:

30 (i) He or she deals in goods of that kind under a name other  
31 than the name of the person making delivery.

32 (ii) He or she is not an auctioneer.

33 (iii) He or she is not generally known by its creditors to be  
34 substantially engaged in selling the goods of others.

35 (B) With respect to each delivery, the aggregate value of the  
36 goods is one thousand dollars (\$1,000) or more at the time of  
37 delivery.

38 (C) The goods are not consumer goods immediately before  
39 delivery.

1 (D) The transaction does not create a security interest that  
2 secures an obligation.

3 (21) “Consignor” means a person that delivers goods to a  
4 consignee in a consignment.

5 (22) “Consumer debtor” means a debtor in a consumer  
6 transaction.

7 (23) “Consumer goods” means goods that are used or bought  
8 for use primarily for personal, family, or household purposes.

9 (24) “Consumer-goods transaction” means a consumer  
10 transaction in which both of the following conditions are  
11 satisfied:

12 (A) An individual incurs an obligation primarily for personal,  
13 family, or household purposes.

14 (B) A security interest in consumer goods secures the  
15 obligation.

16 (25) “Consumer obligor” means an obligor who is an  
17 individual and who incurred the obligation as part of a  
18 transaction entered into primarily for personal, family, or  
19 household purposes.

20 (26) “Consumer transaction” means a transaction in which (i)  
21 an individual incurs an obligation primarily for personal, family,  
22 or household purposes, (ii) a security interest secures the  
23 obligation, and (iii) the collateral is held or acquired primarily for  
24 personal, family, or household purposes. The term includes  
25 consumer-goods transactions.

26 (27) “Continuation statement” means an amendment of a  
27 financing statement which does both of the following:

28 (A) Identifies, by its file number, the initial financing  
29 statement to which it relates.

30 (B) Indicates that it is a continuation statement for, or that it is  
31 filed to continue the effectiveness of, the identified financing  
32 statement.

33 (28) “Debtor” means any of the following:

34 (A) A person having an interest, other than a security interest  
35 or other lien, in the collateral, whether or not the person is an  
36 obligor.

37 (B) A seller of accounts, chattel paper, payment intangibles, or  
38 promissory notes.

39 (C) A consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in subdivision-(2) (b) of Section 7201.

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(ii) Aquatic goods produced in aquacultural operations.

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(C) Supplies used or produced in a farming operation.

(D) Products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) “Filing office” means an office designated in Section 9501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to Section 9526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying



subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

~~(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing. [Reserved]~~

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

1 (46) “Health care insurance receivable” means an interest in or  
2 claim under a policy of insurance which is a right to payment of  
3 a monetary obligation for health care goods or services provided  
4 or to be provided.

5 (47) “Instrument” means a negotiable instrument or any other  
6 writing that evidences a right to the payment of a monetary  
7 obligation, is not itself a security agreement or lease, and is of a  
8 type that in ordinary course of business is transferred by delivery  
9 with any necessary indorsement or assignment. The term does  
10 not include (i) investment property, (ii) letters of credit, or (iii)  
11 writings that evidence a right to payment arising out of the use of  
12 a credit or charge card or information contained on or for use  
13 with the card.

14 (48) “Inventory” means goods, other than farm products,  
15 which are any of the following:

16 (A) Leased by a person as lessor.

17 (B) Held by a person for sale or lease or to be furnished under  
18 a contract of service.

19 (C) Furnished by a person under a contract of service.

20 (D) Consist of raw materials, work in process, or materials  
21 used or consumed in a business.

22 (49) “Investment property” means a security, whether  
23 certificated or uncertificated, security entitlement, securities  
24 account, commodity contract, or commodity account.

25 (50) “Jurisdiction of organization,” with respect to a registered  
26 organization, means the jurisdiction under whose law the  
27 organization is organized.

28 (51) “Letter-of-credit right” means a right to payment or  
29 performance under a letter of credit, whether or not the  
30 beneficiary has demanded or is at the time entitled to demand  
31 payment or performance. The term does not include the right of a  
32 beneficiary to demand payment or performance under a letter of  
33 credit.

34 (52) (A) “Lien creditor” means any of the following:

35 (i) A creditor that has acquired a lien on the property involved  
36 by attachment, levy, or the like.

37 (ii) An assignee for benefit of creditors from the time of  
38 assignment.

39 (iii) A trustee in bankruptcy from the date of the filing of the  
40 petition.

1 (iv) A receiver in equity from the time of appointment.

2 (B) “Lien creditor” does not include a creditor who by filing a  
3 notice with the Secretary of State has acquired only an  
4 attachment or judgment lien on personal property, or both.

5 (53) “Manufactured home” means a structure, transportable in  
6 one or more sections, which, in the traveling mode, is eight  
7 body-feet or more in width or 40 body-feet or more in length, or,  
8 when erected on site, is 320 or more square feet, and which is  
9 built on a permanent chassis and designed to be used as a  
10 dwelling with or without a permanent foundation when  
11 connected to the required utilities, and includes the plumbing,  
12 heating, air-conditioning, and electrical systems contained  
13 therein. The term includes any structure that meets all of the  
14 requirements of this paragraph except the size requirements and  
15 with respect to which the manufacturer voluntarily files a  
16 certification required by the United States Secretary of Housing  
17 and Urban Development and complies with the standards  
18 established under Title 42 of the United States Code.

19 (54) “Manufactured home transaction” means a secured  
20 transaction that satisfies either of the following:

21 (A) It creates a purchase money security interest in a  
22 manufactured home, other than a manufactured home held as  
23 inventory.

24 (B) It is a secured transaction in which a manufactured home,  
25 other than a manufactured home held as inventory, is the primary  
26 collateral.

27 (55) “Mortgage” means a consensual interest in real property,  
28 including fixtures, which secures payment or performance of an  
29 obligation.

30 (56) “New debtor” means a person that becomes bound as  
31 debtor under subdivision (d) of Section 9203 by a security  
32 agreement previously entered into by another person.

33 (57) “New value” means (i) money, (ii) money’s worth in  
34 property, services, or new credit, or (iii) release by a transferee of  
35 an interest in property previously transferred to the transferee.  
36 The term does not include an obligation substituted for another  
37 obligation.

38 (58) “Noncash proceeds” means proceeds other than cash  
39 proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor,” except as used in subdivision (c) of Section 9310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subdivision (d) of Section 9203.

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to,” with respect to an individual, means any of the following:

(A) The spouse of the individual.

(B) A brother, brother-in-law, sister, or sister-in-law of the individual.

(C) An ancestor or lineal descendant of the individual or the individual’s spouse.

(D) Any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to,” with respect to an organization, means any of the following:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(B) An officer or director of, or a person performing similar functions with respect to, the organization.

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A).

(D) The spouse of an individual described in subparagraph (A), (B), or (C).

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

1 (64) “Proceeds,” except as used in subdivision (b) of Section  
2 9609, means any of the following property:

3 (A) Whatever is acquired upon the sale, lease, license,  
4 exchange, or other disposition of collateral.

5 (B) Whatever is collected on, or distributed on account of,  
6 collateral.

7 (C) Rights arising out of collateral.

8 (D) To the extent of the value of collateral, claims arising out  
9 of the loss, nonconformity, or interference with the use of,  
10 defects or infringement of rights in, or damage to, the collateral.

11 (E) To the extent of the value of collateral and to the extent  
12 payable to the debtor or the secured party, insurance payable by  
13 reason of the loss or nonconformity of, defects or infringement of  
14 rights in, or damage to, the collateral.

15 (65) “Promissory note” means an instrument that evidences a  
16 promise to pay a monetary obligation, does not evidence an order  
17 to pay, and does not contain an acknowledgment by a bank that  
18 the bank has received for deposit a sum of money or funds.

19 (66) “Proposal” means a record authenticated by a secured  
20 party that includes the terms on which the secured party is  
21 willing to accept collateral in full or partial satisfaction of the  
22 obligation it secures pursuant to Sections 9620, 9621, and 9622.

23 (67) “Public finance transaction” means a secured transaction  
24 in connection with which all of the following conditions are  
25 satisfied:

26 (A) Debt securities are issued.

27 (B) All or a portion of the securities issued have an initial  
28 stated maturity of at least 20 years.

29 (C) The debtor, obligor, secured party, account debtor or other  
30 person obligated on collateral, assignor or assignee of a secured  
31 obligation, or assignor or assignee of a security interest is a state  
32 or a governmental unit of a state.

33 (68) “Pursuant to commitment,” with respect to an advance  
34 made or other value given by a secured party, means pursuant to  
35 the secured party’s obligation, whether or not a subsequent event  
36 of default or other event not within the secured party’s control  
37 has relieved or may relieve the secured party from its obligation.

38 (69) “Record,” except as used in “for record,” “of record,”  
39 “record or legal title,” and “record owner,” means information  
40 that is inscribed on a tangible medium or which is stored in an

1 electronic or other medium and is retrievable in perceivable  
2 form.

3 (70) “Registered organization” means an organization  
4 organized solely under the law of a single state or the United  
5 States and as to which the state or the United States must  
6 maintain a public record showing the organization to have been  
7 organized.

8 (71) “Secondary obligor” means an obligor to the extent that  
9 either of the following conditions are satisfied:

10 (A) The obligor’s obligation is secondary.

11 (B) The obligor has a right of recourse with respect to an  
12 obligation secured by collateral against the debtor, another  
13 obligor, or property of either.

14 (72) “Secured party” means any of the following:

15 (A) A person in whose favor a security interest is created or  
16 provided for under a security agreement, whether or not any  
17 obligation to be secured is outstanding.

18 (B) A person that holds an agricultural lien.

19 (C) A consignor.

20 (D) A person to which accounts, chattel paper, payment  
21 intangibles, or promissory notes have been sold.

22 (E) A trustee, indenture trustee, agent, collateral agent, or  
23 other representative in whose favor a security interest or  
24 agricultural lien is created or provided for.

25 (F) A person that holds a security interest arising under  
26 Section 2401, 2505, 4210, or 5118, or under subdivision (3) of  
27 Section 2711 or subdivision (5) of Section 10508.

28 (73) “Security agreement” means an agreement that creates or  
29 provides for a security interest.

30 (74) “Send,” in connection with a record or notification,  
31 means to do either of the following:

32 (A) To deposit in the mail, deliver for transmission, or  
33 transmit by any other usual means of communication, with  
34 postage or cost of transmission provided for, addressed to any  
35 address reasonable under the circumstances.

36 (B) To cause the record or notification to be received within  
37 the time that it would have been received if properly sent under  
38 subparagraph (A).

39 (75) “Software” means a computer program and any  
40 supporting information provided in connection with a transaction

relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(78) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) “Termination statement” means an amendment of a financing statement that does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) “Transmitting utility” means a person primarily engaged in the business of any of the following:

(A) Operating a railroad, subway, street railway, or trolley bus.

(B) Transmitting communications electrically, electromagnetically, or by light.

(C) Transmitting goods by pipeline or sewer.

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other divisions apply to this division:

“Applicant”	Section 5102.
“Beneficiary”	Section 5102.
“Broker”	Section 8102.
“Certificated security”	Section 8102.
“Check”	Section 3104.
“Clearing corporation”	Section 8102.
“Contract for sale”	Section 2106.
“Control”	Section 7106.
“Customer”	Section 4104.

1	“Entitlement holder”	Section 8102.
2	“Financial asset”	Section 8102.
3	“Holder in due course”	Section 3302.
4	“Issuer” (with respect to a letter of credit or	
5	letter-of-credit right)	Section 5102.
6	“Issuer” (with respect to a security)	Section 8201.
7	<i>“Issuer” (with respect to documents of title)</i>	<i>Section 7102.</i>
8	“Lease”	Section 10103.
9	“Lease agreement”	Section 10103.
10	“Lease contract”	Section 10103.
11	“Leasehold interest”	Section 10103.
12	“Lessee”	Section 10103.
13	“Lessee in ordinary course of business”	Section 10103.
14	“Lessor”	Section 10103.
15	“Lessor’s residual interest”	Section 10103.
16	“Letter of credit”	Section 5102.
17	“Merchant”	Section 2104.
18	“Negotiable instrument”	Section 3104.
19	“Nominated person”	Section 5102.
20	“Note”	Section 3104.
21	“Proceeds of a letter of credit”	Section 5114.
22	“Prove”	Section 3103.
23	“Sale”	Section 2106.
24	“Securities account”	Section 8501.
25	“Securities intermediary”	Section 8102.
26	“Security”	Section 8102.
27	“Security certificate”	Section 8102.
28	“Security entitlement”	Section 8102.
29	“Uncertificated security”	Section 8102.

30

31 (c) Division 1 (commencing with Section 1101) contains  
 32 general definitions and principles of construction and  
 33 interpretation applicable throughout this division.

34 SEC. 48. Section 9203 of the Commercial Code is amended to  
 35 read:

36 9203. (a) A security interest attaches to collateral when it  
 37 becomes enforceable against the debtor with respect to the  
 38 collateral, unless an agreement expressly postpones the time of  
 39 attachment.



(b) Except as otherwise provided in subdivisions (c) to (i), inclusive, a security interest is enforceable against the debtor and third parties with respect to the collateral only if each of the following conditions is satisfied:

(1) Value has been given.

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned.

(B) The collateral is not a certificated security and is in the possession of the secured party under Section 9313 pursuant to the debtor's security agreement.

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8301 pursuant to the debtor's security agreement.

(D) The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights, *or electronic documents* and the secured party has control under Section 7106, 9104, 9105, 9106, or 9107 pursuant to the debtor's security agreement.

(c) Subdivision (b) is subject to Section 4210 on the security interest of a collecting bank, Section 5118 on the security interest of a letter-of-credit issuer or nominated person, Section 9110 on a security interest arising under Division 2 (commencing with Section 2101) or Division 10 (commencing with Section 10101), and Section 9206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this division or by contract, either of the following conditions is satisfied:

(1) The security agreement becomes effective to create a security interest in the person's property.

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

1 (e) If a new debtor becomes bound as debtor by a security  
2 agreement entered into by another person both of the following  
3 apply:

4 (1) The agreement satisfies paragraph (3) of subdivision (b)  
5 with respect to existing or after-acquired property of the new  
6 debtor to the extent the property is described in the agreement.

7 (2) Another agreement is not necessary to make a security  
8 interest in the property enforceable.

9 (f) The attachment of a security interest in collateral gives the  
10 secured party the rights to proceeds provided by Section 9315  
11 and is also attachment of a security interest in a supporting  
12 obligation for the collateral.

13 (g) The attachment of a security interest in a right to payment  
14 or performance secured by a security interest or other lien on  
15 personal or real property is also attachment of a security interest  
16 in the security interest, mortgage, or other lien.

17 (h) The attachment of a security interest in a securities account  
18 is also attachment of a security interest in the security  
19 entitlements carried in the securities account.

20 (i) The attachment of a security interest in a commodity  
21 account is also attachment of a security interest in the commodity  
22 contracts carried in the commodity account.

23 *SEC. 49. Section 9207 of the Commercial Code is amended to*  
24 *read:*

25 9207. (a) Except as otherwise provided in subdivision (d), a  
26 secured party shall use reasonable care in the custody and  
27 preservation of collateral in the secured party's possession. In the  
28 case of chattel paper or an instrument, reasonable care includes  
29 taking necessary steps to preserve rights against prior parties  
30 unless otherwise agreed.

31 (b) Except as otherwise provided in subdivision (d), if a  
32 secured party has possession of collateral all of the following  
33 apply:

34 (1) Reasonable expenses, including the cost of insurance and  
35 payment of taxes or other charges, incurred in the custody,  
36 preservation, use, or operation of the collateral are chargeable to  
37 the debtor and are secured by the collateral.

38 (2) The risk of accidental loss or damage is on the debtor to  
39 the extent of a deficiency in any effective insurance coverage.

1 (3) The secured party shall keep the collateral identifiable, but  
2 fungible collateral may be commingled.

3 (4) The secured party may use or operate the collateral for any  
4 of the following purposes:

5 (A) For the purpose of preserving the collateral or its value.

6 (B) As permitted by an order of a court having competent  
7 jurisdiction.

8 (C) Except in the case of consumer goods, in the manner and  
9 to the extent agreed by the debtor.

10 (c) Except as otherwise provided in subdivision (d), a secured  
11 party having possession of collateral or control of collateral  
12 under Section 7106, 9104, 9105, 9106, or 9107 may or shall, as  
13 the case may be, do all of the following:

14 (1) May hold as additional security any proceeds, except  
15 money or funds, received from the collateral.

16 (2) Shall apply money or funds received from the collateral to  
17 reduce the secured obligation, unless remitted to the debtor.

18 (3) May create a security interest in the collateral.

19 (d) If the secured party is a buyer of accounts, chattel paper,  
20 payment intangibles, or promissory notes or a consignor both of  
21 the following apply:

22 (1) Subdivision (a) does not apply unless the secured party is  
23 entitled under an agreement to either of the following:

24 (A) To charge back uncollected collateral.

25 (B) Otherwise to full or limited recourse against the debtor or  
26 a secondary obligor based on the nonpayment or other default of  
27 an account debtor or other obligor on the collateral.

28 (2) Subdivisions (b) and (c) do not apply.

29 *SEC. 50. Section 9208 of the Commercial Code is amended to*  
30 *read:*

31 9208. (a) This section applies to cases in which there is no  
32 outstanding secured obligation and the secured party is not  
33 committed to make advances, incur obligations, or otherwise  
34 give value.

35 (b) Within 10 days after receiving an authenticated demand by  
36 the debtor all of the following apply:

37 (1) A secured party having control of a deposit account under  
38 paragraph (2) of subdivision (a) of Section 9104 shall send to the  
39 bank with which the deposit account is maintained an  
40 authenticated statement that releases the bank from any further

1 obligation to comply with instructions originated by the secured  
2 party.

3 (2) A secured party having control of a deposit account under  
4 paragraph (3) of subdivision (a) of Section 9104 shall do either of  
5 the following:

6 (A) Pay the debtor the balance on deposit in the deposit  
7 account.

8 (B) Transfer the balance on deposit into a deposit account in  
9 the debtor's name.

10 (3) A secured party, other than a buyer, having control of  
11 electronic chattel paper under Section 9105 shall do all of the  
12 following:

13 (A) Communicate the authoritative copy of the electronic  
14 chattel paper to the debtor or its designated custodian.

15 (B) If the debtor designates a custodian that is the designated  
16 custodian with which the authoritative copy of the electronic  
17 chattel paper is maintained for the secured party, communicate to  
18 the custodian an authenticated record releasing the designated  
19 custodian from any further obligation to comply with instructions  
20 originated by the secured party and instructing the custodian to  
21 comply with instructions originated by the debtor.

22 (C) Take appropriate action to enable the debtor or its  
23 designated custodian to make copies of or revisions to the  
24 authoritative copy which add or change an identified assignee of  
25 the authoritative copy without the consent of the secured party.

26 (4) A secured party having control of investment property  
27 under paragraph (2) of subdivision (d) of Section 8106 or under  
28 subdivision (b) of Section 9106 shall send to the securities  
29 intermediary or commodity intermediary with which the security  
30 entitlement or commodity contract is maintained an authenticated  
31 record that releases the securities intermediary or commodity  
32 intermediary from any further obligation to comply with  
33 entitlement orders or directions originated by the secured party.

34 (5) A secured party having control of a letter-of-credit right  
35 under Section 9107 shall send to each person having an  
36 unfulfilled obligation to pay or deliver proceeds of the letter of  
37 credit to the secured party an authenticated release from any  
38 further obligation to pay or deliver proceeds of the letter of credit  
39 to the secured party.

1     (6) *A secured party having control of an electronic document*  
2     *shall:*

3     (A) *give control of the electronic document to the debtor or its*  
4     *designated custodian;*

5     (B) *if the debtor designates a custodian that is the designated*  
6     *custodian with which the authoritative copy of the electronic*  
7     *document is maintained for the secured party, communicate to*  
8     *the custodian an authenticated record releasing the designated*  
9     *custodian from any further obligation to comply with instructions*  
10    *originated by the secured party and instructing the custodian to*  
11    *comply with instructions originated by the debtor; and*

12    (C) *take appropriate action to enable the debtor or its*  
13    *designated custodian to make copies of or revisions to the*  
14    *authoritative copy which add or change an identified assignee of*  
15    *the authoritative copy without the consent of the secured party.*

16    SEC. 51. *Section 9301 of the Commercial Code is amended to*  
17    *read:*

18    9301. Except as otherwise provided in Sections 9303 to 9306,  
19    inclusive, the following rules determine the law governing  
20    perfection, the effect of perfection or nonperfection, and the  
21    priority of a security interest in collateral:

22    (1) Except as otherwise provided in this section, while a  
23    debtor is located in a jurisdiction, the local law of that  
24    jurisdiction governs perfection, the effect of perfection or  
25    nonperfection, and the priority of a security interest in collateral.

26    (2) While collateral is located in a jurisdiction, the local law of  
27    that jurisdiction governs perfection, the effect of perfection or  
28    nonperfection, and the priority of a possessory security interest in  
29    that collateral.

30    (3) Except as otherwise provided in paragraph (4), while  
31    negotiable *tangible* documents, goods, instruments, money, or  
32    tangible chattel paper is located in a jurisdiction, the local law of  
33    that jurisdiction governs all of the following:

34    (A) Perfection of a security interest in the goods by filing a  
35    fixture filing.

36    (B) Perfection of a security interest in timber to be cut.

37    (C) The effect of perfection or nonperfection and the priority  
38    of a nonpossessory security interest in the collateral.

39    (4) The local law of the jurisdiction in which the wellhead or  
40    minehead is located governs perfection, the effect of perfection

1 or nonperfection, and the priority of a security interest in  
2 as-extracted collateral.

3 *SEC. 52. Section 9310 of the Commercial Code is amended to*  
4 *read:*

5 9310. (a) Except as otherwise provided in subdivision (b)  
6 and in subdivision (b) of Section 9312, a financing statement  
7 must be filed to perfect all security interests and agricultural  
8 liens.

9 (b) The filing of a financing statement is not necessary to  
10 perfect a security interest that satisfies any of the following  
11 conditions:

12 (1) It is perfected under subdivision (d), (e), (f), or (g) of  
13 Section 9308.

14 (2) It is perfected under Section 9309 when it attaches.

15 (3) It is a security interest in property subject to a statute,  
16 regulation, or treaty described in subdivision (a) of Section 9311.

17 (4) It is a security interest in goods in possession of a bailee  
18 which is perfected under paragraph (1) or (2) of subdivision (d)  
19 of Section 9312.

20 (5) It is a security interest in certificated securities, documents,  
21 goods, or instruments which is perfected without filing, *control*,  
22 or possession under subdivision (e), (f), or (g) of Section 9312.

23 (6) It is a security interest in collateral in the secured party's  
24 possession under Section 9313.

25 (7) It is a security interest in a certificated security which is  
26 perfected by delivery of the security certificate to the secured  
27 party under Section 9313.

28 (8) It is a security interest in deposit accounts, electronic  
29 chattel paper, *electronic documents*, investment property, or  
30 letter-of-credit rights which is perfected by control under Section  
31 9314.

32 (9) It is a security interest in proceeds which is perfected under  
33 Section 9315.

34 (10) It is perfected under Section 9316.

35 (11) It is a security interest in, or claim in or under, any policy  
36 of insurance including unearned premiums which is perfected by  
37 written notice to the insurer under paragraph (4) of subdivision  
38 (b) of Section 9312.

39 (c) If a secured party assigns a perfected security interest or  
40 agricultural lien, a filing under this division is not required to

1 continue the perfected status of the security interest against  
2 creditors of and transferees from the original debtor.

3 *SEC. 53. Section 9312 of the Commercial Code is amended to*  
4 *read:*

5 9312. (a) A security interest in chattel paper, negotiable  
6 documents, instruments, or investment property may be perfected  
7 by filing.

8 (b) Except as otherwise provided in subdivisions (c) and (d) of  
9 Section 9315 for proceeds, all of the following apply:

10 (1) A security interest in a deposit account may be perfected  
11 only by control under Section 9314.

12 (2) Except as otherwise provided in subdivision (d) of Section  
13 9308, a security interest in a letter-of-credit right may be  
14 perfected only by control under Section 9314.

15 (3) A security interest in money may be perfected only by the  
16 secured party's taking possession under Section 9313.

17 (4) A security interest in, or claim in or under, any policy of  
18 insurance, including unearned premiums, may be perfected only  
19 by giving written notice of the security interest or claim to the  
20 insurer. This paragraph does not apply to a health care insurance  
21 receivable. A security interest in a health care insurance  
22 receivable may be perfected only as otherwise provided in this  
23 division.

24 (c) While goods are in the possession of a bailee that has  
25 issued a negotiable document covering the goods both of the  
26 following apply:

27 (1) A security interest in the goods may be perfected by  
28 perfecting a security interest in the document.

29 (2) A security interest perfected in the document has priority  
30 over any security interest that becomes perfected in the goods by  
31 another method during that time.

32 (d) While goods are in the possession of a bailee that has  
33 issued a nonnegotiable document covering the goods, a security  
34 interest in the goods may be perfected by any of the following  
35 methods:

36 (1) Issuance of a document in the name of the secured party.

37 (2) The bailee's receipt of notification of the secured party's  
38 interest.

39 (3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession *or control* for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of either of the following:

(1) Ultimate sale or exchange.

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of either of the following:

(1) Ultimate sale or exchange.

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in subdivision (e), (f), or (g) expires, perfection depends upon compliance with this division.

*SEC. 54. Section 9313 of the Commercial Code is amended to read:*

9313. (a) Except as otherwise provided in subdivision (b), a secured party may perfect a security interest in *tangible* negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subdivision (d) of Section 9316.

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than



1 the debtor, the secured party, or a lessee of the collateral from the  
2 debtor in the ordinary course of the debtor's business, when  
3 either of the following conditions is satisfied:

4 (1) The person in possession authenticates a record  
5 acknowledging that it holds possession of the collateral for the  
6 secured party's benefit.

7 (2) The person takes possession of the collateral after having  
8 authenticated a record acknowledging that it will hold possession  
9 of collateral for the secured party's benefit.

10 (d) If perfection of a security interest depends upon possession  
11 of the collateral by a secured party, perfection occurs no earlier  
12 than the time the secured party takes possession and continues  
13 only while the secured party retains possession.

14 (e) A security interest in a certificated security in registered  
15 form is perfected by delivery when delivery of the certificated  
16 security occurs under Section 8301 and remains perfected by  
17 delivery until the debtor obtains possession of the security  
18 certificate.

19 (f) A person in possession of collateral is not required to  
20 acknowledge that it holds possession for a secured party's  
21 benefit.

22 (g) If a person acknowledges that it holds possession for the  
23 secured party's benefit both of the following apply:

24 (1) The acknowledgment is effective under subdivision (c) or  
25 under subdivision (a) of Section 8301, even if the  
26 acknowledgment violates the rights of a debtor.

27 (2) Unless the person otherwise agrees or law other than this  
28 division otherwise provides, the person does not owe any duty to  
29 the secured party and is not required to confirm the  
30 acknowledgment to another person.

31 (h) A secured party having possession of collateral does not  
32 relinquish possession by delivering the collateral to a person  
33 other than the debtor or a lessee of the collateral from the debtor  
34 in the ordinary course of the debtor's business if the person was  
35 instructed before the delivery or is instructed contemporaneously  
36 with the delivery to do either of the following:

37 (1) To hold possession of the collateral for the secured party's  
38 benefit.

39 (2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subdivision (h) violates the rights of a debtor. A person to which collateral is delivered under subdivision (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this division otherwise provides.

*SEC. 55. Section 9314 of the Commercial Code is amended to read:*

9314. (a) A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, *or electronic documents* may be perfected by control of the collateral under Section 7106, 9104, 9105, 9106, or 9107.

(b) A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, *or electronic documents* is perfected by control under Section 7106, 9104, 9105, or 9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under Section 9106 from the time the secured party obtains control and remains perfected by control until both of the following conditions are satisfied:

(1) The secured party does not have control.

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate.

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner.

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

*SEC. 56. Section 9317 of the Commercial Code is amended to read:*

9317. (a) A security interest or agricultural lien is subordinate to the rights of both of the following:

(1) A person entitled to priority under Section 9322.

(2) Except as otherwise provided in subdivision (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected, or one of the conditions specified in paragraph (3) of subdivision (b) of

1 Section 9203 is met and a financing statement covering the  
2 collateral is filed.

3 (b) Except as otherwise provided in subdivision (e), a buyer,  
4 other than a secured party, of tangible chattel paper, *tangible*  
5 documents, goods, instruments, or a security certificate takes free  
6 of a security interest or agricultural lien if the buyer gives value  
7 and receives delivery of the collateral without knowledge of the  
8 security interest or agricultural lien and before it is perfected.

9 (c) Except as otherwise provided in subdivision (e), a lessee of  
10 goods takes free of a security interest or agricultural lien if the  
11 lessee gives value and receives delivery of the collateral without  
12 knowledge of the security interest or agricultural lien and before  
13 it is perfected.

14 (d) A licensee of a general intangible or a buyer, other than a  
15 secured party, of accounts, electronic chattel paper, *electronic*  
16 documents, general intangibles, or investment property other than  
17 a certificated security takes free of a security interest if the  
18 licensee or buyer gives value without knowledge of the security  
19 interest and before it is perfected.

20 (e) Except as otherwise provided in Sections 9320 and 9321, if  
21 a person files a financing statement with respect to a purchase  
22 money security interest before or within 20 days after the debtor  
23 receives delivery of the collateral, the security interest takes  
24 priority over the rights of a buyer, lessee, or lien creditor which  
25 arise between the time the security interest attaches and the time  
26 of filing.

27 *SEC. 57. Section 9338 of the Commercial Code is amended to*  
28 *read:*

29 9338. If a security interest or agricultural lien is perfected by  
30 a filed financing statement providing information described in  
31 paragraph (5) of subdivision (b) of Section 9516 which is  
32 incorrect at the time the financing statement is filed both of the  
33 following apply:

34 (1) The security interest or agricultural lien is subordinate to a  
35 conflicting perfected security interest in the collateral to the  
36 extent that the holder of the conflicting security interest gives  
37 value in reasonable reliance upon the incorrect information.

38 (2) A purchaser, other than a secured party, of the collateral  
39 takes free of the security interest or agricultural lien to the extent  
40 that, in reasonable reliance upon the incorrect information, the

1 purchaser gives value and, in the case of *tangible* chattel paper,  
2 *tangible* documents, goods, instruments, or a security certificate,  
3 receives delivery of the collateral.

4 SEC. 58. Section 9601 of the Commercial Code is amended to  
5 read:

6 9601. (a) After default, a secured party has the rights  
7 provided in this chapter and, except as otherwise provided in  
8 Section 9602, those rights provided by agreement of the parties.  
9 A secured party may do both of the following:

10 (1) Reduce a claim to judgment, foreclose, or otherwise  
11 enforce the claim, security interest, or agricultural lien by any  
12 available judicial procedure.

13 (2) If the collateral is documents, proceed either as to the  
14 documents or as to the goods they cover.

15 (b) A secured party in possession of collateral or control of  
16 collateral under Section 7106, 9104, 9105, 9106, or 9107 has the  
17 rights and duties provided in Section 9207.

18 (c) The rights under subdivisions (a) and (b) are cumulative  
19 and may be exercised simultaneously.

20 (d) Except as otherwise provided in subdivision (g) and in  
21 Section 9605, after default, a debtor and an obligor have the  
22 rights provided in this chapter and by agreement of the parties.

23 (e) If a secured party has reduced its claim to judgment, the  
24 lien of any levy that may be made upon the collateral by virtue of  
25 an execution based upon the judgment relates back to the earliest  
26 of any of the following:

27 (1) The date of perfection of the security interest or  
28 agricultural lien in the collateral.

29 (2) The date of filing a financing statement covering the  
30 collateral.

31 (3) Any date specified in a statute under which the agricultural  
32 lien was created.

33 (f) A sale pursuant to an execution is a foreclosure of the  
34 security interest or agricultural lien by judicial procedure within  
35 the meaning of this section. A secured party may purchase at the  
36 sale and thereafter hold the collateral free of any other  
37 requirements of this division.

38 (g) Except as otherwise provided in subdivision (c) of Section  
39 9607, this part imposes no duties upon a secured party that is a

1 consignor or is a buyer of accounts, chattel paper, payment  
2 intangibles, or promissory notes.

3 *SEC. 59. Section 10103 of the Commercial Code is amended*  
4 *to read:*

5 10103. (a) In this division, unless the context otherwise  
6 requires:

7 (1) “Buyer in ordinary course of business” means a person  
8 who, in good faith and without knowledge that the sale to him or  
9 her is in violation of the ownership rights or security interest or  
10 leasehold interest of a third party in the goods, buys in ordinary  
11 course from a person in the business of selling goods of that kind,  
12 but does not include a pawnbroker. “Buying” may be for cash or  
13 by exchange of other property or on secured or unsecured credit  
14 and includes ~~receiving~~ *acquiring* goods or documents of title  
15 under a preexisting contract for sale but does not include a  
16 transfer in bulk or as security for or in total or partial satisfaction  
17 of a money debt.

18 (2) “Cancellation” occurs when either party puts an end to the  
19 lease contract for default by the other party.

20 (3) “Commercial unit” means such a unit of goods as by  
21 commercial usage is a single whole for purposes of lease and  
22 division of which materially impairs its character or value on the  
23 market or in use. A commercial unit may be a single article, as a  
24 machine, or a set of articles, as a suite of furniture or a line of  
25 machinery, or a quantity, as a gross or carload, or any other unit  
26 treated in use or in the relevant market as a single whole.

27 (4) “Conforming” goods or performance under a lease contract  
28 means goods or performance that are in accordance with the  
29 obligations under the lease contract.

30 (5) “Consumer lease” means a lease that a lessor regularly  
31 engaged in the business of leasing or selling makes to a lessee  
32 who is an individual and who takes under the lease primarily for  
33 a personal, family, or household purpose.

34 (6) “Fault” means wrongful act, omission, breach, or default.

35 (7) “Finance lease” means a lease with respect to which (A)  
36 the lessor does not select, manufacture, or supply the goods, (B)  
37 the lessor acquires the goods or the right to possession and use of  
38 the goods in connection with the lease, and (C) one of the  
39 following occurs:

1 (i) The lessee receives a copy of the contract by which the  
2 lessor acquired the goods or the right to possession and use of the  
3 goods before signing the lease contract.

4 (ii) The lessee's approval of the contract by which the lessor  
5 acquired the goods or the right to possession and use of the goods  
6 is a condition to effectiveness of the lease contract.

7 (iii) The lessee, before signing the lease contract, receives an  
8 accurate and complete statement designating the promises and  
9 warranties, and any disclaimers of warranties, limitations or  
10 modifications of remedies, or liquidated damages, including  
11 those of a third party, such as the manufacturer of the goods,  
12 provided to the lessor by the person supplying the goods in  
13 connection with or as part of the contract by which the lessor  
14 acquired the goods or the right to possession and use of the  
15 goods.

16 (iv) The lessor, before the lessee signs the lease contract,  
17 informs the lessee in writing (aa) of the identity of the person  
18 supplying the goods to the lessor, unless the lessee has selected  
19 that person and directed the lessor to acquire the goods or the  
20 right to possession and use of the goods from that person, (bb)  
21 that the lessee is entitled under this division to the promises and  
22 warranties, including those of any third party, provided to the  
23 lessor by the person supplying the goods in connection with or as  
24 part of the contract by which the lessor acquired the goods or the  
25 right to possession and use of the goods, and (cc) that the lessee  
26 may communicate with the person supplying the goods to the  
27 lessor and receive an accurate and complete statement of those  
28 promises and warranties, including any disclaimers and  
29 limitations of them or of remedies.

30 (8) "Goods" means all things that are movable at the time of  
31 identification to the lease contract, or are fixtures (Section  
32 10309), but the term does not include money, documents,  
33 instruments, accounts, chattel paper, general intangibles, or  
34 minerals or the like, including oil and gas, before extraction. The  
35 term also includes the unborn young of animals.

36 (9) "Installment lease contract" means a lease contract that  
37 authorizes or requires the delivery of goods in separate lots to be  
38 separately accepted, even though the lease contract contains a  
39 clause "each delivery is a separate lease" or its equivalent.

1 (10) “Lease” means a transfer of the right to possession and  
2 use of goods for a term in return for consideration, but a sale,  
3 including a sale on approval or a sale or return, or retention or  
4 creation of a security interest is not a lease. Unless the context  
5 clearly indicates otherwise, the term includes a sublease.

6 (11) “Lease agreement” means the bargain, with respect to the  
7 lease, of the lessor and the lessee in fact as found in their  
8 language or by implication from other circumstances including  
9 course of dealing or usage of trade or course of performance as  
10 provided in this division. Unless the context clearly indicates  
11 otherwise, the term includes a sublease agreement.

12 (12) “Lease contract” means the total legal obligation that  
13 results from the lease agreement as affected by this division and  
14 any other applicable rules of law. Unless the context clearly  
15 indicates otherwise, the term includes a sublease contract.

16 (13) “Leasehold interest” means the interest of the lessor or  
17 the lessee under a lease contract.

18 (14) “Lessee” means a person who acquires the right to  
19 possession and use of goods under a lease. Unless the context  
20 clearly indicates otherwise, the term includes a sublessee.

21 (15) “Lessee in ordinary course of business” means a person  
22 who, in good faith and without knowledge that the lease to him  
23 or her is in violation of the ownership rights or security interest  
24 or leasehold interest of a third party in the goods, leases in  
25 ordinary course from a person in the business of selling or  
26 leasing goods of that kind, but does not include a pawnbroker.  
27 “Leasing” may be for cash or by exchange of other property or  
28 on secured or unsecured credit and includes ~~receiving~~ *acquiring*  
29 goods or documents of title under a preexisting lease contract but  
30 does not include a transfer in bulk or as security for or in total or  
31 partial satisfaction of a money debt.

32 (16) “Lessor” means a person who transfers the right to  
33 possession and use of goods under a lease. Unless the context  
34 clearly indicates otherwise, the term includes a sublessor.

35 (17) “Lessor’s residual interest” means the lessor’s interest in  
36 the goods after expiration, termination, or cancellation of the  
37 lease contract.

38 (18) “Lien” means a charge against or interest in goods to  
39 secure payment of a debt or performance of an obligation, but the  
40 term does not include a security interest.

1 (19) “Lot” means a parcel or a single article that is the subject  
2 matter of a separate lease or delivery, whether or not it is  
3 sufficient to perform the lease contract.

4 (20) “Merchant lessee” means a lessee that is a merchant with  
5 respect to goods of the kind subject to the lease.

6 (21) “Present value” means the amount as of a date certain of  
7 one or more sums payable in the future, discounted to the date  
8 certain. The discount is determined by the interest rate specified  
9 by the parties if the rate was not manifestly unreasonable at the  
10 time the transaction was entered into; otherwise, the discount is  
11 determined by a commercially reasonable rate that takes into  
12 account the facts and circumstances of each case at the time the  
13 transaction was entered into.

14 (22) “Purchase” includes taking by sale, lease, mortgage,  
15 security interest, pledge, gift, or any other voluntary transaction  
16 creating an interest in goods.

17 (23) “Sublease” means a lease of goods the right to possession  
18 and use of which was acquired by the lessor as a lessee under an  
19 existing lease.

20 (24) “Supplier” means a person from whom a lessor buys or  
21 leases goods to be leased under a finance lease.

22 (25) “Supply contract” means a contract under which a lessor  
23 buys or leases goods to be leased.

24 (26) “Termination” occurs when either party pursuant to a  
25 power created by agreement or law puts an end to the lease  
26 contract otherwise than for default.

27 (b) Other definitions applying to this division and the sections  
28 in which they appear are:

29 “Accessions.” Subdivision (a) of Section 10310.

30 “Construction mortgage.” Paragraph (4) of subdivision (a) of  
31 Section 10309.

32 “Encumbrance.” Paragraph (5) of subdivision (a) of Section  
33 10309.

34 “Fixtures.” Paragraph (1) of subdivision (a) of Section 10309.

35 “Fixture filing.” Paragraph (2) of subdivision (a) of Section  
36 10309.

37 “Purchase money lease.” Paragraph (3) of subdivision (a) of  
38 Section 10309.

39 (c) The following definitions in other divisions apply to this  
40 division:



1 “Account.” Paragraph (2) of subdivision (a) of Section 9102.

2 “Between merchants.” Subdivision (3) of Section 2104.

3 “Buyer.” Paragraph (a) of subdivision (1) of Section 2103.

4 “Chattel paper.” Paragraph (11) of subdivision (a) of Section  
5 9102.

6 “Consumer goods.” Paragraph (23) of subdivision (a) of  
7 Section 9102.

8 “Document.” Paragraph (30) of subdivision (a) of Section  
9 9102.

10 “Entrusting.” Subdivision (3) of Section 2403.

11 “General intangible.” Paragraph (42) of subdivision (a) of  
12 Section 9102.

13 ~~“Good faith.” Paragraph (b) of subdivision (1) of Section 2103.~~

14 “Instrument.” Paragraph (47) of subdivision (a) of Section  
15 9102.

16 “Merchant.” Subdivision (1) of Section 2104.

17 “Mortgage.” Paragraph (55) of subdivision (a) of Section 9102.

18 “Pursuant to commitment.” Paragraph (68) of subdivision (a)  
19 of Section 9102.

20 “Receipt.” Paragraph (c) of subdivision (1) of Section 2103.

21 “Sale.” Subdivision (1) of Section 2106.

22 “Sale on approval.” Section 2326.

23 “Sale or return.” Section 2326.

24 “Seller.” Paragraph (d) of subdivision (1) of Section 2103.

25 (d) In addition, Division 1 contains general definitions and  
26 principles of construction and interpretation applicable  
27 throughout this division.

28 *SEC. 60. Section 10207 of the Commercial Code is repealed.*

29 ~~10207. (a) If a lease contract involves repeated occasions for  
30 performance by either party with knowledge of the nature of the  
31 performance and opportunity for objection to it by the other, any  
32 course of performance accepted or acquiesced in without  
33 objection is relevant to determine the meaning of the lease  
34 agreement.~~

35 ~~(b) The express terms of a lease agreement and any course of  
36 performance, as well as any course of dealing and usage of trade,  
37 must be construed whenever reasonable as consistent with each  
38 other; but if that construction is unreasonable, express terms  
39 control course of performance, course of performance controls~~

1 ~~both course of dealing and usage of trade, and course of dealing~~  
2 ~~controls usage of trade.~~

3 ~~(e) Subject to the provisions of Section 10208 on modification~~  
4 ~~and waiver, course of performance is relevant to show a waiver~~  
5 ~~or modification of any term inconsistent with the course of~~  
6 ~~performance.~~

7 *SEC. 61. Section 10501 of the Commercial Code is amended*  
8 *to read:*

9 10501. (a) Whether the lessor or the lessee is in default under  
10 a lease contract is determined by the lease agreement and this  
11 division.

12 (b) If the lessor or the lessee is in default under the lease  
13 contract, the party seeking enforcement has rights and remedies  
14 as provided in this division and, except as limited by this  
15 division, as provided in the lease agreement.

16 (c) If the lessor or the lessee is in default under the lease  
17 contract, the party seeking enforcement may reduce the party's  
18 claim to judgment, or otherwise enforce the lease contract by  
19 self-help or any available judicial procedure or nonjudicial  
20 procedure, including administrative proceeding, arbitration, or  
21 the like, in accordance with this division.

22 (d) Except as otherwise provided in ~~subdivision (1) of Section~~  
23 ~~1106 subdivision (a) of Section 1305~~ or this division or the lease  
24 agreement, the rights and remedies referred to in subdivisions (b)  
25 and (c) are cumulative.

26 (e) If the lease agreement covers both real property and goods,  
27 the party seeking enforcement may proceed under this chapter as  
28 to the goods, or under other applicable law as to both the real  
29 property and the goods in accordance with that party's rights and  
30 remedies in respect of the real property, in which case this  
31 chapter does not apply.

32 *SEC. 62. Section 10514 of the Commercial Code is amended*  
33 *to read:*

34 10514. (a) In rejecting goods, a lessee's failure to state a  
35 particular defect that is ascertainable by reasonable inspection  
36 precludes the lessee from relying on the defect to justify rejection  
37 or to establish default:

38 (1) If, stated seasonably, the lessor or the supplier could have  
39 cured it (Section 10513); or

1 (2) Between merchants if the lessor or the supplier after  
2 rejection has made a request in writing for a full and final written  
3 statement of all defects on which the lessee proposes to rely.

4 (b) A lessee's failure to reserve rights when paying rent or  
5 other consideration against documents precludes recovery of the  
6 payment for defects apparent ~~on the face of~~ *in* the documents.

7 *SEC. 63. Section 10518 of the Commercial Code is amended*  
8 *to read:*

9 10518. (a) After a default by a lessor under the lease contract  
10 of the type described in subdivision (a) of Section 10508, or, if  
11 agreed, after other default by the lessor, the lessee may cover by  
12 making any purchase or lease of or contract to purchase or lease  
13 goods in substitution for those due from the lessor.

14 (b) Except as otherwise provided with respect to damages  
15 liquidated in the lease agreement (Section 10504) or otherwise  
16 determined pursuant to agreement of the parties—~~(Section~~  
17 ~~(Sections 1302 and 10503 and subdivision (3) of Section 1102)),~~  
18 if a lessee's cover is by a lease agreement substantially similar to  
19 the original lease agreement and the new lease agreement is  
20 made in good faith and in a commercially reasonable manner, the  
21 lessee may recover from the lessor as damages (1) the present  
22 value, as of the date of the commencement of the term of the new  
23 lease agreement, of the rent under the new lease agreement  
24 applicable to that period of the new lease term which is  
25 comparable to the then remaining term of the original lease  
26 agreement minus the present value as of the same date of the  
27 total rent for the then remaining lease term of the original lease  
28 agreement, and (2) any incidental or consequential damages, less  
29 expenses saved in consequence of the lessor's default.

30 (c) If a lessee's cover is by lease agreement that for any reason  
31 does not qualify for treatment under subdivision (b), or is by  
32 purchase or otherwise, the lessee may recover from the lessor as  
33 if the lessee had elected not to cover and Section 10519 governs.

34 *SEC. 64. Section 10519 of the Commercial Code is amended*  
35 *to read:*

36 10519. (a) Except as otherwise provided with respect to  
37 damages liquidated in the lease agreement (Section 10504) or  
38 otherwise determined pursuant to agreement of the parties  
39 ~~(Section (Sections 1302 and 10503 and subdivision (3) of Section~~  
40 ~~1102)),~~ if a lessee elects not to cover or a lessee elects to cover

1 and the cover is by lease agreement that for any reason does not  
2 qualify for treatment under subdivision (b) of Section 10518, or  
3 is by purchase or otherwise, the measure of damages for  
4 nondelivery or repudiation by the lessor or for rejection or  
5 revocation of acceptance by the lessee is the present value, as of  
6 the date of the default, of the then market rent minus the present  
7 value as of the same date of the original rent, computed for the  
8 remaining lease term of the original lease agreement, together  
9 with incidental and consequential damages, less expenses saved  
10 in consequence of the lessor's default.

11 (b) Market rent is to be determined as of the place for tender  
12 or, in cases of rejection after arrival or revocation of acceptance,  
13 as of the place of arrival.

14 (c) Except as otherwise agreed, if the lessee has accepted  
15 goods and given notification (subdivision (c) of Section 10516),  
16 the measure of damages for nonconforming tender or delivery or  
17 other default by a lessor is the loss resulting in the ordinary  
18 course of events from the lessor's default as determined in any  
19 manner that is reasonable together with incidental and  
20 consequential damages, less expenses saved in consequence of  
21 the lessor's default.

22 (d) Except as otherwise agreed, the measure of damages for  
23 breach of warranty is the present value at the time and place of  
24 acceptance of the difference between the value of the use of the  
25 goods accepted and the value if they had been as warranted for  
26 the lease term, unless special circumstances show proximate  
27 damages of a different amount, together with incidental and  
28 consequential damages, less expenses saved in consequence of  
29 the lessor's default or breach of warranty.

30 *SEC. 65. Section 10526 of the Commercial Code is amended*  
31 *to read:*

32 10526. (a) A lessor may stop delivery of goods in the  
33 possession of a carrier or other bailee if the lessor discovers the  
34 lessee to be insolvent and may stop delivery of carload,  
35 truckload, planeload, or larger shipments of express or freight if  
36 the lessee repudiates or fails to make a payment due before  
37 delivery, whether for rent, security, or otherwise under the lease  
38 contract, or for any other reason the lessor has a right to withhold  
39 or take possession of the goods.

1 (b) In pursuing its remedies under subdivision (a), the lessor  
2 may stop delivery until:

3 (1) Receipt of the goods by the lessee;

4 (2) Acknowledgment to the lessee by any bailee of the goods,  
5 except a carrier, that the bailee holds the goods for the lessee; or

6 (3) Such an acknowledgment to the lessee by a carrier via  
7 reshipment or as ~~warehouseman~~ *a warehouse*.

8 (c) (1) To stop delivery, a lessor shall so notify as to enable  
9 the bailee by reasonable diligence to prevent delivery of the  
10 goods.

11 (2) After notification, the bailee shall hold and deliver the  
12 goods according to the directions of the lessor, but the lessor is  
13 liable to the bailee for any ensuing charges or damages.

14 (3) A carrier who has issued a nonnegotiable bill of lading is  
15 not obliged to obey a notification to stop received from a person  
16 other than the consignor.

17 *SEC. 66. Section 10527 of the Commercial Code is amended*  
18 *to read:*

19 10527. (a) After a default by a lessee under the lease contract  
20 of the type described in subdivision (a) of, or paragraph (1) of  
21 subdivision (c) of, Section 10523 or after the lessor refuses to  
22 deliver or takes possession of goods (Section 10525 or 10526),  
23 or, if agreed, after other default by a lessee, the lessor may  
24 dispose of the goods concerned or the undelivered balance  
25 thereof by lease, sale, or otherwise.

26 (b) Except as otherwise provided with respect to damages  
27 liquidated in the lease agreement (Section 10504) or otherwise  
28 determined pursuant to agreement of the parties—~~(Section~~  
29 ~~(Sections 1302 and 10503 and subdivision (3) of Section 1102)),~~  
30 if the disposition is by lease agreement substantially similar to  
31 the original lease agreement and the new lease agreement is  
32 made in good faith and in a commercially reasonable manner, the  
33 lessor may recover from the lessee as damages (1) accrued and  
34 unpaid rent as of the date of the commencement of the term of  
35 the new lease agreement, (2) the present value, as of the same  
36 date, of the total rent for the then remaining lease term of the  
37 original lease agreement minus the present value, as of the same  
38 date, of the rent under the new lease agreement applicable to that  
39 period of the new lease term which is comparable to the then  
40 remaining term of the original lease agreement, and (3) any

1 incidental damages allowed under Section 10530, less expenses  
2 saved in consequence of the lessee's default.

3 (c) If the lessor's disposition is by lease agreement that for any  
4 reason does not qualify for treatment under subdivision (b), or is  
5 by sale or otherwise, the lessor may recover from the lessee as if  
6 the lessor had elected not to dispose of the goods and Section  
7 10528 governs.

8 (d) A subsequent buyer or lessee who buys or leases from the  
9 lessor in good faith for value as a result of a disposition under  
10 this section takes the goods free of the original lease contract and  
11 any rights of the original lessee even though the lessor fails to  
12 comply with one or more of the requirements of this division.

13 (e) The lessor is not accountable to the lessee for any profit  
14 made on any disposition. A lessee who has rightfully rejected or  
15 justifiably revoked acceptance shall account to the lessor for any  
16 excess over the amount of the lessee's security interest  
17 (subdivision (e) of Section 10508).

18 *SEC. 67. Section 10528 of the Commercial Code is amended*  
19 *to read:*

20 10528. (a) Except as otherwise provided with respect to  
21 damages liquidated in the lease agreement (Section 10504) or  
22 otherwise determined pursuant to agreement of the parties  
23 (~~Section~~ *(Sections 1302 and 10503 and subdivision (3) of Section*  
24 ~~1102)~~), if a lessor elects to retain the goods or a lessor elects to  
25 dispose of the goods and the disposition is by lease agreement  
26 that for any reason does not qualify for treatment under  
27 subdivision (b) of Section 10527, or is by sale or otherwise, the  
28 lessor may recover from the lessee as damages for a default of  
29 the type described in subdivision (a) of, or paragraph (1) of  
30 subdivision (c) of, Section 10523, or, if agreed, for other default  
31 of the lessee, (1) accrued and unpaid rent as of the date of default  
32 if the lessee has never taken possession of the goods, or, if the  
33 lessee has taken possession of the goods, as of the date the lessor  
34 repossesses the goods or an earlier date on which the lessee  
35 makes a tender of the goods to the lessor, (2) the present value as  
36 of the date determined under paragraph (1) of the total rent for  
37 the then remaining lease term of the original lease agreement  
38 minus the present value as of the same date of the market rent at  
39 the place where the goods are located computed for the same  
40 lease term, and (3) any incidental damages allowed under Section

1 10530, less expenses saved in consequence of the lessee's  
2 default.

3 (b) If the measure of damages provided in subdivision (a) is  
4 inadequate to put a lessor in as good a position as performance  
5 would have, the measure of damages is the present value of the  
6 profit, including reasonable overhead, the lessor would have  
7 made from full performance by the lessee, together with any  
8 incidental damages allowed under Section 10530, due allowance  
9 for costs reasonably incurred and due credit for payments or  
10 proceeds of disposition.

11 *SEC. 68. Section 11105 of the Commercial Code is amended*  
12 *to read:*

13 11105. (a) In this division:

14 (1) "Authorized account" means a deposit account of a  
15 customer in a bank designated by the customer as a source of  
16 payment of payment orders issued by the customer to the bank. If  
17 a customer does not so designate an account, any account of the  
18 customer is an authorized account if payment of a payment order  
19 from that account is not inconsistent with a restriction on the use  
20 of that account.

21 (2) "Bank" means a person engaged in the business of banking  
22 and includes a savings bank, savings and loan association, credit  
23 union, and trust company. A branch or separate office of a bank  
24 is a separate bank for purposes of this division.

25 (3) "Customer" means a person, including a bank, having an  
26 account with a bank or from whom a bank has agreed to receive  
27 payment orders.

28 (4) "Funds-transfer business day" of a receiving bank means  
29 the part of a day during which the receiving bank is open for the  
30 receipt, processing, and transmittal of payment orders and  
31 cancellations and amendments of payment orders.

32 (5) "Funds-transfer system" means a wire transfer network,  
33 automated clearinghouse, or other communication system of a  
34 clearinghouse or other association of banks through which a  
35 payment order by a bank may be transmitted to the bank to which  
36 the order is addressed.

37 ~~(6) "Good faith" means honesty in fact and the observance of~~  
38 ~~reasonable commercial standards of fair dealing. [Reserved]~~

39 (7) "Prove" with respect to a fact means to meet the burden of  
40 establishing the fact under subdivision (8) of Section 1201.

(b) Other definitions applying to this division and the sections in which they appear are:

Acceptance: Section 11209.

Beneficiary: Section 11103.

Beneficiary's bank: Section 11103.

Executed: Section 11301.

Execution date: Section 11301.

Funds transfer: Section 11104.

Funds-transfer system rule: Section 11501.

Intermediary bank: Section 11104.

Originator: Section 11104.

Originator's bank: Section 11104.

Payment by beneficiary's bank to beneficiary: Section 11405.

Payment by originator to beneficiary: Section 11406.

Payment by sender to receiving bank: Section 11403.

Payment date: Section 11401.

Payment order: Section 11103.

Receiving bank: Section 11103.

Security procedure: Section 11201.

Sender: Section 11103.

(c) The following definitions in Division 4 (commencing with Section 4101) apply to this division:

Clearinghouse: Section 4104.

Item: Section 4104.

Suspends payments: Section 4104.

(d) In addition Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

*SEC. 69. Section 11106 of the Commercial Code is amended to read:*

11106. (a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~subdivision (27) of Section 1201~~ 1202. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or



different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this division refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this division.

*SEC. 70. Section 11204 of the Commercial Code is amended to read:*

11204. (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 11202, or (ii) not enforceable, in whole or in part, against the customer under Section 11203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subdivision (a) may be fixed by agreement as stated in subdivision ~~(1) of Section 1204~~ (b) of Section 1302, but the obligation of a receiving bank to refund payment as stated in subdivision (a) may not otherwise be varied by agreement.

*SEC. 71. Section 13104 of the Commercial Code is repealed.*

1     ~~13104. The division on documents of title (Division 7) does~~  
2     ~~not repeal or modify any laws prescribing the form or contents of~~  
3     ~~documents of title or the services or facilities to be afforded by~~  
4     ~~bailees, or otherwise regulating bailees' businesses in respects not~~  
5     ~~specifically dealt with herein; but the fact that such laws are~~  
6     ~~violated does not affect the status of a document of title which~~  
7     ~~otherwise complies with the definition of a document of title~~  
8     ~~(Section 1201).~~

9     *SEC. 72. Section 44 of this act applies to a document of title*  
10    *that is issued or a bailment that arises on or after January 1,*  
11    *2007. That section does not apply to a document of title that is*  
12    *issued or a bailment that arises before January 1, 2007, even if*  
13    *the document of title or bailment would be subject to that section*  
14    *if the document of title had been issued or bailment had arisen on*  
15    *or after January 1, 2007. Section 44 of this act does not apply to*  
16    *a right of action that has accrued before January 1, 2007.*

17    *SEC. 73. A document of title issued or a bailment that arises*  
18    *before January 1, 2007, and the rights, obligations, and interests*  
19    *flowing from that document or bailment are governed by any*  
20    *statute or other rule amended or repealed by this act as if*  
21    *amendment or repeal had not occurred and may be terminated,*  
22    *completed, consummated, or enforced under that statute or other*  
23    *rule.*

24    ~~SECTION 1. It is the intent of the Legislature to amend~~  
25    ~~Articles 1 and 7 of the Commercial Code to make revisions~~  
26    ~~proposed by the National Conference of Commissioners on~~  
27    ~~Uniform State Laws.~~